COMPLETED
184
Y 4. J 89/2:S. hrg. 99-634

S. HRG. 99-634

THE ATTEMPTED DEFECTION OF MIROSLAV MEDVID

ORIGINAL
#194

HEARINGS

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY

OF THE

COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

NINETY-NINTH CONGRESS

SECOND SESSION

ON

THE ISSUES OF ASYLUM PROCEDURES FOR EASTERN BLOC DEFECTORS

FEBRUARY 5 AND MARCH 7, 1986

Serial No. J-99-81

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE
59-577 O WASHINGTON : 1986

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

I
BEST COPY AVAILABLE

COMMITTEE ON THE JUDICIARY

STROM THURMOND, South Carolina, *Chairman*

CHARLES McC. MATHIAS, Jr., Maryland
PAUL LAXALT, Nevada
ORRIN G. HATCH, Utah
ALAN K. SIMPSON, Wyoming
JOHN P. EAST, North Carolina
CHARLES E. GRASSLEY, Iowa
JEREMIAH DENTON, Alabama
ARLEN SPECTER, Pennsylvania
MITCH McCONNELL, Kentucky

JOSEPH R. BIDEN, Jr., Delaware
EDWARD M. KENNEDY, Massachusetts
ROBERT C. BYRD, West Virginia
HOWARD M. METZENBAUM, Ohio
DENNIS DeCONCINI, Arizona
PATRICK J. LEAHY, Vermont
HOWELL HEFLIN, Alabama
PAUL SIMON, Illinois

DENNIS W. SHEDD, *Chief Counsel and Staff Director*
DIANA L. WATERMAN, *General Counsel*
MELINDA KOUTSOUMPAS, *Chief Clerk*
MARK H. GITENSTEIN, *Minority Chief Counsel*

SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY

ALAN K. SIMPSON, Wyoming, *Chairman*

CHARLES E. GRASSLEY, Iowa
JEREMIAH DENTON, Alabama

EDWARD M. KENNEDY, Massachusetts
PAUL SIMON, Illinois

RICHARD W. DAY, *Chief Counsel and Staff Director*
CARL W. HAMPE, *Counsel*
JERRY M. TINKER, *Minority Counsel*

BEST COPY AVAILABLE

CONTENTS

STATEMENTS OF MEMBERS

	Page
Simpson, Alan K., a U.S. Senator from the State of Wyoming	1, 73
Grassley, Charles E., a U.S. Senator from the State of Iowa	77
Denton, Jeremiah, a U.S. Senator from the State of Alabama	6, 74
Metzenbaum, Howard M., a U.S. Senator from the State of Ohio	4
Simon, Paul, a U.S. Senator from the State of Illinois	2, 76
Humphrey, Gordon J., a U.S. Senator from the State of New Hampshire	3, 77

CHRONOLOGICAL LIST OF WITNESSES

WEDNESDAY, FEBRUARY 5, 1986

Woessner, William M., Deputy Assistant Secretary of State for European and Canadian Affairs, Department of State	7
Nelson, Alan C., Commissioner, Immigration and Naturalization Service, accompanied by Roger P. Brandemuehl, Assistant Commissioner, Border Patrol, Immigration and Naturalization Service	27
Caruthers, Lt. Comdr. J.M., U.S. Navy, Naval Medical Clinic, New Orleans, LA; and Maj. William M. Hunt III, U.S. Air Force Medical Center, Keesler Air Force Base, MS	47
Szmagala, Taras, member, Board of Directors, Ukrainian National Association	61

FRIDAY, MARCH 7, 1986

Sprulock, Ernest, agent, U.S. Border Patrol; and Joseph Bashaw, agent, U.S. Border Patrol, accompanied by R. Travis Douglas, counsel; and Alan C. Nelson, Commissioner, Immigration and Naturalization Service, U.S. Department of Justice	79
Ridgway, Rozanne L., Assistant Secretary of State for European and Canadian Affairs, accompanied by Louis Sell, Deputy Director for Bilateral Political Relations, Office of Soviet Union Affairs, Department of State	96
Worley, William B., deputy chief agent, U.S. Border Patrol; and David V. Vannett, agent, U.S. Border Patrol	138

ALPHABETICAL LISTING AND MATERIALS SUBMITTED

Bashaw, Joseph: testimony	92
Brandemuehl, Roger P.:	
Testimony	29
Prepared statement	31
Caruthers, Lt. Comdr. J.M.:	
Testimony	47
Responses to committee questions concerning Mr. Medvid	54
Dixon, Alan J.: Prepared statement	6
Douglas, R. Travis: Testimony	89
Hunt, Maj. William M., III:	
Testimony	47
Responses to Senator Simpson's questions	158
Responses to Senator Denton's questions	170
Metzenbaum, Howard M.: Testimony	4
Nelson, Alan C.:	
Testimony	27

BEST COPY AVAILABLE

Page

Nelson, Alan C.—Continued
Prepared statements 31, 80
Attachment: 208.8 Processing Asylum Request. Immediate Action Cases 86
Ridgway, Rozanne L.:
Testimony 96
Prepared statement 119
Identity of Seaman Medvid 121
Sell, Louis:
Testimony 98
Exhibits 8 and 9—Mr. Medvid's statement 117
Simpson, Alan K.:
Letters from:
David Vannett, March 28, 1986 151
William B. Worley, April 1, 1986 152
James W. Dyer, April 1, 1986 153
J.M. Caruthers, Lt. Cmdr., April 4, 1986, November 6, 1985 ..... 154, 156
Spurlock, Ernest:
Testimony 89
Certified INS Interpreters 131
Notice to detain, deport, remove, or present aliens 133
Photos of Miroslav Medvid 135
Szmagala, Taras:
Testimony 61
Prepared statement 65
Vannett, David T.: Testimony 140
Woessner, William M.:
Testimony 7
Prepared statement 9
Responses to questions submitted by Senators Simon, Humphrey, Grassley, and Denton 22, 23
Worley, William B.: Testimony 138

BEST COPY AVAILABLE

THE ATTEMPTED DEFECTION OF MIROSLAV MEDVID

WEDNESDAY, FEBRUARY 5, 1986

U.S. SENATE,
SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 11:05 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Alan K. Simpson (chairman of the subcommittee) presiding.

Present: Senators Simpson, Grassley, Simon, Metzenbaum, and Humphrey (ex officio).

Also present: Richard Day, chief counsel and staff director; Carl Hampe, Jodi Brayton, counsels; and Dee Dee Herzog, staff assistant.

OPENING STATEMENT OF HON. ALAN K. SIMPSON, A U.S. SENATOR FROM THE STATE OF WYOMING, CHAIRMAN, SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY

Senator SIMPSON. The hearing will come to order.

This is the third hearing to be held by the Subcommittee on Immigration and Refugee Policy pursuant to our oversight function with regard to the Medvid incident. We had a first hearing on November 5, 1985. That open hearing was then followed 2 days later by a closed hearing in order to receive additional evidence.

The subcommittee staff continued its investigation during the Christmas recess, and the purpose of this hearing is to address issues that have arisen after the initial hearings. The subcommittee will be holding additional hearings on the Medvid incident and on the issue of asylum procedures for Eastern bloc defectors.

I say this quite sincerely: If there are any additional questions or issues which require investigation, I do sincerely invite my colleagues to present those questions or issues to me or to the staff and we will deal with them. There is no need to feel that somehow I am interested in hiding something or shoveling something under the rug. I never do that in my business.

However, in my business of dealing with veterans, dealing with issues in nuclear energy and commercial reactors and immigration and refugee policy, I am fully and totally aware—and I have said this many times, but it seems good to say it again—that the issues in this peculiar arena of Washington, DC, often become clouded by fear, guilt, emotion and racism. You can kill or pass a bill in this place by a deft blend of the use of fear, guilt, emotion or racism. I

BEST COPY AVAILABLE

do not play in that field. I say get that stuff off the table and then we will get to the issues and we will deal with it honestly and openly and fairly, and we will not let those things detract us from our work—because that is all they do.

I am a very accessible man. I am willing to listen to anybody on any subject at any time—try me. So if some want to raise the spectre that "Simpson will not help," I think we ought to put that one to bed right now. I will listen as long as someone wants me to listen.

The issues which we address this morning are whether or not Medvid was mentally and physically capable of making a rational decision concerning an asylum application, whether a substitute Medvid was presented by the Soviets for the second interview with United States officials, and why a Russian translator, rather than a Ukrainian translator, was used for the second interview. Those are some of the things we will discuss here.

We will later have a joint hearing with Senator Grassley's subcommittee on asylum policy procedure issues.

Three of the witnesses we shall hear today are uniquely suited to address issues. They were on the scene in New Orleans and present at either one or more of the interviews of Seaman Medvid. We will hear today also from a prominent and very respected member of the Ukrainian-American community, which has a very deep and understandable interest in the incident and in examining procedures that would assure that we might avoid similar such incidents in the future. We look forward to hearing that.

So with that, we have two of our Senate colleagues here, the subcommittee members, of course, Senator Simon—and Senator Kennedy is necessarily absent. He is in the Soviet Union this week. So it is a pleasure to welcome Senator Metzenbaum and Senator Humphrey to the proceedings and I certainly extend you the right to question the witnesses.

The member of the subcommittee, Senator Simon, is entitled to any statement you wish to make before Mr. Woessner proceeds.

Senator SIMON. Just very briefly, Mr. Chairman.

First of all, there is no question about the fairness of the chairman in his willingness to look into this thing. I have the overall impression from previous hearings that, perhaps because of the summit meeting that was coming up, there was an attempt to avoid any kind of international incident that might reflect unfavorably on that meeting.

I hope the relationship between the United States and the Soviet Union will mature to the point where both countries can act on the basis of our beliefs and maintain a mature, good relationship.

The reason for having the hearing is the point that the chairman touched on. It is not simply to find out what happened here, but to avoid this in the future. We do not want future Medvid incidents. We want to as a country stand up in this area of human rights, at the same time we maintain good relations witin other countries.

I think that can be done, I think it must be done, and I look forward to hearing the witnesses, Mr. Chairman.

Senator SIMPSON. Thank you very much, Paul. And let me recognize—I do not want to foreclose anyone—Senator Humphrey, if you

BEST COPY AVAILABLE

have a short statement, I would certainly appreciate having that now, if you wish.

Senator HUMPHREY. I want to thank the distinguished chairman for scheduling this hearing today and, likewise, for inviting me to participate even though I am not a member of the subcommittee. I will ask to insert my remarks in full and simply abbreviate them.

A great many questions remain unanswered, Mr. Chairman. Indeed, some of the questions need not even have been thought of as yet, because you cannot know which questions to ask if you do not have all of the facts, and that is just the problem.

I think the American people need to know the facts. I think we in Congress need to know the facts, and not just the facts as served up by the Executive but the facts discovered by an aggressive investigation, an independent investigation.

I think that in particularly outrageous cases such as this, that it is never well to let an agency investigate itself, that is, in this case the Executive investigate the Executive. Rather, I think we need a legislative investigation of this matter.

Let me just finally say, as grateful as I am for this hearing—and not only this hearing, Mr. Chairman, but the hearing that you conducted during the Medvid crisis before Mr. Medvid left our shores—nonetheless, the limitations of a hearing or two as the means of inquiry into a matter of this kind are perfectly obvious.

Under the best of circumstances, hearings tend to be superficial processes in determining facts and we have other problems. Today we have time constraints and so on. What I believe is needed—and I discussed this with the chairman and I guess we do not agree on the point, but what I believe is needed is an aggressive discovery process, involving, if necessary, subpoenas and oath giving. We need a dedicated staff to pursue this investigation, not a subcommittee staff that is tied up and distracted by other important matters.

I think that anything less than that will simply not do in this case, because our national honor is at stake. When that ship sailed over the horizon, it took not only Miroslav Medvid, but it took our national honor with it. I think the only way to expunge this tragic stain from our Nation's honor is to conduct a full fledged, independent investigation of the kind which I and a number of other Senators have suggested.

Nonetheless, I am grateful for this hearing. I am sure it will be constructive. I am not sure, however, it will be definitive.

I thank the Chairman.

[The complete statement of Senator Humphrey follows:]

PREPARED STATEMENT OF SENATOR GORDON J. HUMPHREY

I would like to thank the distinguished chairman for scheduling this hearing today, on a matter of extreme importance. I would also like to thank the chairman for extending an invitation to me, and I welcome this opportunity to participate in this hearing.

Eighty-seven days have passed since the Soviet freighter bearing Miroslav Medvid departed the United States. Despite the passage of almost three months, we know little more about the case today, than we did on November 9, 1985. What little we do know, is disturbing.

Last October, a young man desperately attempted to seek asylum in the United States. He jumped twice into the waters of the Mississippi River, to avoid returning

BEST COPY AVAILABLE

to the Soviet Union. Yet, for some reason, he was returned to his ship, against his will.

Many questions regarding this case remain unanswered. It is clear to this senator and to many of my colleagues that the State Department did not take all necessary steps to ascertain Medvid's true wishes before allowing him to be returned to his ship. The American people were given assurances that Medvid was properly examined and interviewed. However, important medical documents that were later released, made it clear that we were all mislead from the beginning. Previous assurances made to the American people crumbled as additional information exposed the fact that we were not initially told the whole story by the State Department.

I welcome this opportunity to start finding out why the American people were not provided with all the facts. Among the questions that need to be answered are:

Why were we assured that Medvid was in "generally good" physical condition when in fact he was not.

Why did American officials not feel it was necessary to report Mr. Medvid's slit wrist and bandaged arm, yet feel it was necessary to report that he enjoyed viewing news coverage of himself on television.

How can a physician administer what he considers to be a "thorough" physical examination, without taking blood or urine samples.

Why did officials not feel it was necessary to take these samples, in view of the fact that they had been told by the Soviet physician aboard the ship that Medvid had been injected with powerful tranquilizing drugs.

The American people need to know who was involved with this case at all levels, and how certain decisions could have possibly been made given the facts surrounding this case. Senator Simpson has taken an important first step toward investigating this case. I look forward to hearing the testimony of our witnesses.

May I say finally, with due respect to the chairman and members, that I do not regard a hearing or two as sufficient disposition of the outrageous manner in which our Government dealt with the case of Miroslav Medvid. I believe that a full-fledged Senate investigation is called for. I believe that we need investigators working full time on this matter, with no other responsibilities to distract them. I believe we need an aggressive discovery process, involving, if necessary subpoenas and oath-giving, to determine all of the facts of this case. I believe we should not rely on the facts as they are served up by the executive. And I believe the full complement of facts, once discovered, should be released to the American people. I believe, finally, that an independent investigation is needed to determine whether there was any unethical or unlawful conduct on the part of any U.S. employee or official. And if such were to be discovered, I believe the responsible parties should be held accountable.

Nothing less than a full-fledged, independent investigation, with dedicated staff and resources, will fill the bill, in my opinion. A hearing or two is not sufficient. Nonetheless, I thank the chairman for this hearing and for the opportunity to present my testimony.

Senator SIMPSON. I know of Senator Metzenbaum's great interest. He is the ranking member of the subcommittee with which we will have a joint hearing later this month. Senator Metzenbaum, if you have a brief statement, we would appreciate having that.

OPENING STATEMENT OF HOWARD M. METZENBAUM, A U.S. SENATOR FROM THE STATE OF OHIO

Senator METZENBAUM. I thank the Chairman for conducting this hearing. I am not sure that I am prepared to identify myself with the fact that our national honor sailed over the horizon, as my colleague states, when the ship left with Mr. Medvid on it, but I think that there are some questions that are unanswered. And I think it bothers all of us as to whether we did the right thing, and when I say "we," I include myself in that "we," because I have had a sort of sense of concern of my own conduct.

I was in New Orleans when Mr. Medvid jumped ship, and I remember seeing it on TV and was amazed. I wondered why we were acting as we were, and I was tempted to go down to the Immigration Service or the Coast Guard to find out what was taking place.

BEST COPY AVAILABLE

I did not do that and I have often wondered as to whether, if I had, whether Mr. Medvid would still be in this country and not have been taken back to the Soviet Union and whether the procedures might have been different.

I guess what really happened was Mr. Medvid in a certain sense saved Mr. Kapsa, who subsequently defected from a Polish boat in the Cleveland community, and I immediately went to Cleveland and indicated my concern. I wanted to be certain about what happened and I wanted to be certain that the Immigration and Naturalization Service did not take any action concerning him that would turn him back to the Poles. They did not and shortly after we had involved ourselves in the matter the INS indicated that he would be permitted to remain in this country.

I wonder whether or not Mr. Medvid could have been helped in the same way if I or some other Senator or Congressperson or someone else had interceded.

I think there are some questions that need to be answered. I do not think it is a question of pointing fingers. I think it is a question of reevaluating our own procedures so that there will be no more Medvids. I think that was a source of embarrassment to all of us.

Thank you, Mr. Chairman.

Senator SIMPSON. Thank you very much, Howard.

Let me say that if any member of the subcommittee or my Senate colleagues would wish to review subpoena procedures or whom they would wish to subpoena—oath-giving was also indicated—or anything else, I am right here. So, having resisted the appointment of a panel with a $300,000 budget to do what this committee is charged with doing, I stand ready to do what is necessary. I can tell you, I am one in this place that is not hunting for turf. I have turf laying all over the place.

So if there is anyone that wishes to probe or to move forward, then Mr. Day here, who deals with my colleagues and their staffs on a totally non-partisan basis—and I can promise you that—and Mr. Jerry Tinker, who has been a member of this staff for 17 years with Senator Kennedy, are available. I am available for any Senators, who wish to deal on any kind of an issue, any type of subpoena, any measure that might be requested. And I think before we proceed, let us all start on the basis that the Medvid issue and the Medvid situation was botched totally. Let us start with that.

No one has ever tried to cover that up. It was a botch, a total botch, a mistake, an error. There have been 96 ship-jumpers in 2 years at that one station in New Orleans, all apparently processed without incident. I think we lose track of that. So maybe we can just kind of pull that back together as we proceed to review the botched one.

Yes?

Senator SIMON. Mr. Chairman, I wonder, in view of the charges that have been made, in view of the witnesses that we have, whether there would not be the view of the suggestion of the gentleman from New Hampshire, whether it would not be wise simply to swear in the witnesses here today?

Senator SIMPSON. I think that would be perfectly appropriate. With that, I will swear the witness.

[The witness was sworn.]

BEST COPY AVAILABLE

Senator SIMPSON. You may proceed—excuse me. I have a statement by Senator Dixon who is very interested in this issue and a cosponsor, with Senator Humphrey, of the resolution. I will insert that in the record.

[The statement of Senator Dixon follows:]

PREPARED STATEMENT BY SENATOR ALAN J. DIXON

Mr. Chairman, it is important that the Subcommittee on Immigration and Refugee Policy examine the Medvid affair. The tragedy of Miroslav Medvid deserves the closest examination, in an effort to answer the numerous questions surrounding his return to the Soviet Union.

It is important, however, that U.S. procedures for handling requests for political asylum from individuals such as Miroslav Medvid be examined in depth, in an effort to prevent future mistakes. Questions remain unanswered, and they deserve the full attention of the Senate. For these reasons, I urge the creation of a Special Panel. A majority in the Senate, including three out of five members of this subcommittee, are cosponsors of legislation creating the Panel.

Senator SIMPSON. And I have a letter from Senator Denton, who is a very active member of this subcommittee. He regrets that he cannot be at this third oversight hearing. He will be in Mobile, AL, with the Vice President and he encloses a statement and a list of questions and I will enter that in the record.

[The statement of Senator Denton follows:]

PREPARED STATEMENT BY SENATOR JEREMIAH DENTON

Mr. Chairman, I would like to commend you for your decision to hold this hearing today so that we might consider further the case of Soviet seaman Miroslav Medvid. Although you and I have some difference of opinion regarding the events of last October and the judgment exercised by the Department of State and the Immigration and Naturalization Service, you have been most willing to work with us to resolve our concerns. I personally appreciate your efforts.

I join with you in welcoming our witnesses and hope that today we will be able to resolve some of the controversies caused by Miroslav Medvid's brief sojourn in United States custody. By now, I believe that virtually everyone is in agreement that the seaman's original intent when he left the *Marshall Koniev*—regardless of terminology used—was to seek political asylum.

He did not succeed, and I believe that it is important for all Americans, particularly those officials charged with responsibility for immigration and refugee policy and procedures, to understand why. The answer to that question goes back to the very nature of communist states and our understanding of them.

We give lip service to the fact that physical and mental coercion is the legitimizing force for Marxist-Leninist regimes, but our policies and procedures do not take adequate account of it. Until they do, our own freedom and prosperity are in ultimate jeopardy.

Having lived under communist coercion for over seven and a half years, I understand well its use routinely to force strong men to make oral or written statements against their will. In my capacity as Chairman of the Subcommittee on Security and Terrorism, I have received further extensive testimony regarding such methods.

I therefore find it heartbreaking to speculate that this free nation may have shown itself to be so naive or even so calloused as to fail to consider adequately the possibility that coercive measures were employed against seaman Medvid after his return to the *Marshall Koniev*. Having had such a suspicion, I find it disheartening that the United States would not have acted to protect seaman Medvid.

Although we are limited in what we can do to deny the use of coercive measures to the Soviet government against its own citizens inside the Soviet Union, I do not believe that we can condone it within the boundaries of the United States. I believe further that State Department procedures for reinterviewing someone who has been in Soviet custody must take into account the probability of coercion and factor it into the final decision regarding disposition of the matter. To do otherwise makes a mockery of our values and freedoms.

Although we have a nice tidy written statement from the Soviet seaman expressing his desire to return to the Soviet Union, I do not believe we are released from our obligations to him. If that statement was coerced, which should have been

BEST COPY AVAILABLE

firmly established, our government failed to provide him the full protection of our laws governing asylum and should be properly called to account.

I appreciate the presence of each of our witnesses today and hope that we can draw some conclusions from this hearing that will prevent such a tragedy from occurring again.

Senator SIMPSON. Now, sir, please proceed, if you can, in the summary period as expressed.

TESTIMONY OF WILLIAM M. WOESSNER, DEPUTY ASSISTANT SECRETARY OF STATE FOR EUROPEAN AND CANADIAN AFFAIRS, DEPARTMENT OF STATE

Mr. WOESSNER. Mr. Chairman and members of the committee, you have my testimony. I will just hit on some of the highlights centering on these questions that have appeared in the press and elsewhere since my last appearance before this committee.

As you indicated, one of the questions raised has to do with the identity of Miroslav Medvid, was he the same person?

Senator SIMPSON. Would you pull that microphone a little bit closer, that one there, yes. Thank you, Mr. Woessner.

Mr. WOESSNER. As I say, allegations have been made that the person interviewed by the Department of State was not the same person who initially jumped ship. I can assure you that there is no truth to that allegation. We have no doubt that the individual we interviewed was the same man who originally jumped from the *Konev* on October 24. Now, this is based on both eyewitness and photographic identification.

The INS representative who originally interviewed seaman Medvid on shore, the one who took his request for asylum and processed it, on October 24, confirmed that the individual in the sickbay of the *Marshal Konev* on October 25 was the same person that he had interviewed on shore the day before.

Now, there was another INS officer present onboard ship in the sick bay with this INS representative, and he then in turn was present at the meeting between the State Department representative and seaman Medvid on October 26, also on board the *Marshal Konev*. He, too, confirmed that it was the same person.

And finally, the Department of State representative who first saw seaman Medvid on October 26 and was with this INS representative, had with him a photograph of Medvid that had been taken by the INS agents when he was first interviewed on shore. I have that photograph with me.

The Department of State representative closely compared that photograph with the man before him and satisfied himself that it was the same individual. He also checked the passport and it was the same individual.

In other words, there was a chain of human observation of Medvid that confirmed that the person interviewed at the last stages of this incident was the same person who was interviewed when he first asked for asylum on shore.

There have been allegations—again, as you alluded to, Mr. Chairman—that because seaman Medvid was of Ukrainian nationality, the communication with him in Russian was somehow defective. In fact, as soon as we learned of this case, the State Department dispatched a professional interpreter to the scene in New Or-

BEST COPY AVAILABLE

leans to make sure that there would be no problem in communicating with seaman Medvid.

This interpreter is a contract employee of the State Department who is very highly regarded, who in fact was born in the Ukraine and is bilingual in Ukrainian and in Russian. He arrived in New Orleans, boarded the *Marshal Konev* on Saturday, October 26, and he provided the interpretation for the interviews that took place on the Coast Guard cutter and at the U.S. Naval shore facility on October 28 and 29, in other words, the two key interviews in which we attempted to determine what seaman Medvid's wishes in this case were.

He also, that is the interpreter, talked with seaman Medvid informally many times during the 24-hour period that we had him in our custody. The interpreter's assessment was that seaman Medvid was more fluent in Russian and that Russian was his preferred language. When seaman Medvid spoke Ukrainian, he made some grammatical errors.

The key point though is that at no point did seaman Medvid express a wish to have the interview conducted in any other language than Russian. Had he asked to have the interview in Ukrainian, we could easily have done so. The interpreter was bilingual.

Finally, to address one other issue that has come up, allegations made that seaman Medvid was drugged and therefore he was not competent freely to express his preference to stay in the United States. Let me assure you, we are and were at the time under no illusions about the repressive nature of the Soviet Government or its willingness to use coercion and threats and other means to control its people.

The Soviet doctor on the *Marshal Konev* told us that he had administered a sedative to seaman Medvid. This was one of the reasons why we insisted, over strong Soviet objections, that seaman Medvid be removed from the *Marshal Konev* to the Coast Guard cutter and then, because we were not satisfied, we had him removed to the U.S. Navy shore facility where he could be examined and observed in detail by U.S. military physicians.

On the basis of their examinations and their observation of seaman Medvid's behavior during the 24 hours he was in our custody, they concluded that seaman Medvid was not under the influence of drugs at the time of the interviews and that he was mentally and physically competent to make his decision.

I think those are the three points in contention that I was asked to address and I would be pleased to respond to any questions you have. My complete testimony will be submitted.

Thank you.

[The prepared statement of Mr. Woessner follows:]

BEST COPY AVAILABLE

PREPARED STATEMENT OF WILLINAM M. WOESSNER

Mr. Chairman and Members of the Committee. Last November I testified before your Committee concerning the case of Soviet Seaman Miroslav Medvid. At that time I provided a detailed account of the the role of the Department of State in the case of Seaman Medvid. I welcome this opportunity to clarify several specific issues about which there has been considerable misunderstanding or misinformation. My prepared remarks will therefore focus on the following specific questions: 1) How did we know that the man we interviewed was really Seaman Medvid; 2) Did Seaman Medvid's Ukrainian nationality prevent us from communicating with him; and 3) How can we be sure that Seaman Medvid's behavior during the interview was not influenced by drugs.

IDENTITY OF SEAMAN MEDVID

Allegations have been made in the press and elsewhere that the individual interviewed by the Department of State was not the same person who initially jumped ship. I can assure you that there is no truth to such allegations. The Department of State has no doubt that the individual we interviewed was the same man who originally jumped from the M.V. Konev on October 24. This is based on both eyewitness and photographic identification:

-- An INS representative who had originally interviewed Seaman Medvid on shore on October 24 confirmed that the individual in the sick bay of the M.V. Konev on October 25 was the same person he had interviewed on shore the day before.

-- Another INS officer present at the first meeting between the Department of State representative and Seaman Medvid aboard

BEST COPY AVAILABLE

the M.V. Konev on October 26 had also observed Seaman Medvid the previous day in the sick bay of the M.V. Konev and confirmed that it was the same person.

-- This INS officer also identified Medvid through a birth mark on the heel which he had observed on Medvid on both October 25 and 26 while he was on the Soviet ship. With this INS officer on October 25 was an INS officer who had originally interviewed Seaman Medvid on shore.

-- The Department of State representative who first saw Seaman Medvid on October 26 had with him a photograph of Medvid taken by the INS agents who had interviewed him the evening of October 24 before he was returned to the Soviet ship. The Department of State representative closely compared that photograph with the man before him and satisfied himself and others participating in the interviews that it was the same individual. I have in my possesion the original INS photograph if members of the Committee wish to view it.

-- The Department of State representative and the INS representative also closely examined Medvid's passport. They compared the picture and the physical description appearing in Seaman Medvid's Soviet passport with the individual interviewed on October 28 and 29 and satisfied themselves that the person was really Seaman Medvid.

LANGUAGE ISSUE

Allegations have appeared in the press and elsewhere that because Seaman Medvid was of Ukrainian nationality, we were not able to communicate with him or that he could not effectively make known his wishes. Such allegations are without foundation.

BEST COPY AVAILABLE

The Department of State dispatched a professional interpreter to the scene in New Orleans to ensure that there was no problem in communicating with Seaman Medvid. The interpreter arrived in New Orleans and boarded the M.V. Konev on Saturday October 26; he provided the interpretation for the interviews which took place aboard the U.S. Coast Guard Cutter and at the U.S. naval shore facility on October 28 and 29. He also talked with Seaman Medvid informally many times during the twenty four hour period Seaman Medvid was in our custody.

This professional interpreter was himself born in Kiev, in the Ukraine, and is fluent in both Russian and Ukrainian. He had the opportunity to speak to Seaman Medvid in both languages. It is our interpeter's assessment that Seaman Medvid was more fluent in Russian and that Russian was his preferred language. When Seaman Medvid spoke Ukrainian he made grammatical errors. At no time did Seaman Medvid express a wish to have the interview conducted in any other language than Russian. Had he asked to have the interview in Ukrainian, we would have done so.

Mr. Chairman, some of the misinformation that Seaman Medvid spoke only Ukranian seems to have derived from the fact that the original interpreter used by INS in a long distance telephone interview on the evening of October 24, Mrs. Irene Padoch, spoke to Seaman Medvid in Ukrainian. She has testified that Seaman Medvid was fluent in that language. We all agree that Seaman Medvid could speak Ukrainian. However, it must be pointed out that Mrs. Padoch has testified that she herself does not speak Russian. Mrs. Padoch never communicated with Seaman Medvid in Russian and is therefore not qualified to evaluate Seaman Medvid's competence in Russian or to evaluate his relative competency in Russian or Ukrainian.

BEST COPY AVAILABLE

More general allegations have been made that Ukrainians do not speak Russian and that they can only communicate in Ukrainian. Such allegations are simply not accurate. In schools, in the workplace, and in cities such as Kiev, Russian is becoming widespread in the Ukraine. There is no doubt this development represents a conscious and deplorable effort at Russification by the Soviet authorities. Further evidence of this language question is provided by the behavior of the crew of the M.V. Konev. The Department of State's professional interpreter spent several days and nights aboard the M.V. Konev where he was in contact with many members of the crew, the majority of whom, judging by their surnames, were from the Ukraine. The interpreter never once heard the crew speak Ukrainian, even among themselves. We understand that members of the American-Ukrainian community are concerned about the implications of this development for the future of the cultural heritage of the Ukraine. We share this concern and have frequently spoken out against such developments in the USSR. This does not, however, alter the fact that Seaman Medvid was fluent in Russian and that we could communicate effectively with him in that language during the interview.

THE DRUG ISSUE

Allegations have been made that Seaman Medvid was drugged and that he was therefore not competent freely to express his preference to stay in the United States. I can assure you that we were and are under no illusions about the repressive nature of the Soviet Government and its willingness to use coercion and threats and other means to control its people. The Soviet doctor on the M.V. Konev told us that he had administered a sedative to Seaman Medvid. This was one of the reasons why we insisted, over strong Soviet objections, that Seaman Medvid be removed from the M.V. Konev to the Coast Guard Cutter and then,

BEST COPY AVAILABLE

because we were still not satisfied, to the U.S. Navy shore facility where he could be examined and observed in detail by U.S. military physicians. Seaman Medvid was extensively examined by a U.S. Air Force psychiatrist and a U.S. Navy doctor. On the basis of their examinations and observation of Seaman Medvid's behavior during the twenty four hours he was in our custody, they concluded that Seaman Medvid was was not under the influence of drugs at the time of the interviews and that he was mentally and physically competent to make his decision. We made it clear to the doctors that, in carrying out their examination, they had full discretion to perform any tests they deemed necessary, including blood and urine tests, to help them reach their conclusion. It was their professional judgement that these tests were not necessary to help them reach their determination.

In conclusion Mr. Chairman, as I stated last November, from the time the Department of State was first informed about Seaman Medvid, our objective was clear and straight-forward: to remove Seaman Medvid from the Soviet ship in order to interview him in an environment under our control to determine whether or not he wished to remain here or return to the USSR. The operating assumption of the Department of State, the Department of Justice and the White House was that Seaman Medvid's behavior in jumping from his ship and his resistence to being returned to it constituted presumptive evidence of his desire to remain in the United States. Over a period of days, extraordinary measures were taken to ensure that he was given that opportunity, first aboard the U.S. Coast Guard cutter and then again at the U.S. naval facility after he had had a good night's rest. We were obviously not able to recreate Seaman Medvid's original frame of mind of October 24, nor will any of us ever know what pressures may have been exerted on Seaman Medvid while he was on the Soviet ship prior to his transfer to

BEST COPY AVAILABLE

our custody on October 28. From the outset there was always the possibility that Seaman Medvid would decide to return to to his ship and to the USSR and that if he did so, we would have to respect that choice. In cases such as this, only the individual involved can decide what action to take in light of the risks and personal costs involved for himself or for others. It was not a decision we could make for him.

I would be pleased to respond to your questions.

Senator SIMPSON. Thank you very much. I will limit my questions to 5 minutes and necessarily do that with other members of the panel. We may get time for a second round, but I certainly will do that. We will proceed.

There have been charges by some that the second interview of Mr. Medvid was invalid because Soviet personnel were always present and that they constituted an intimidating force. Could you explain the reason for the Soviet personnel, whether that is normal procedure for those type of interviews, and address the issue of whether Medvid was significantly intimidated, at least to the knowledge of your department or yourself by that presence.

Mr. WOESSNER. There were four Soviet officials present, I believe. Two would come from the Soviet Embassy here in Washington and there was a Soviet doctor and there was the master of the ship, the *Konev*.

It is standard procedure during defector interviews that the Soviets be present. Our main concern in this was to create a situation completely under our control and to be as noncoercive as possible.

The State Department representative ran the interview, both the first one and then the second one the next day. He opened up, making a statement to Medvid of what it was we were trying to do in this interview, gave him assurances that if he wished to remain in this country, he had every right to do so and we would insure his safety.

The senior Soviet representative was allowed to make an initial statement and that was it. He was not allowed to intervene in the subsequent questioning. The questioning was conducted between the State Department representative and seaman Medvid. The Soviet representative, it is true, tried at several points to bring the interview to a close, saying we were going too far in questioning Medvid, that Medvid had expressed his views and that should be enough for us, but we persisted.

When we were not satisfied on the first day, we adjourned that hearing, that interview, gave him a good night's rest, transferred him to shore and the next day he was again given an interview and every opportunity to say if he wished to remain in this country.

BEST COPY AVAILABLE

Obviously, these sorts of situations are delicate and we have to bear in mind we must not do anything to prejudice our right to protect American citizens in the Soviet Union if they were to find themselves in similar circumstances. But as far as possible, under the circumstances, I believe we had the situation under our control and we tried to create an atmosphere that was not in any way intimidating to the sailor.

Senator SIMPSON. Are you saying that if we had not had a Soviet presence there, that it is felt that any American who might have been apprehended in the Soviet Union in this type of situation, an asylum situation or any other situation, might have found that same inability to have an official American presence with them during inquiry?

Mr. WOESSNER. No doubt about that whatsoever. It is a right that we insist on vigorously with American citizens in the Soviet Union.

Senator SIMPSON. And we insist upon it and they insist upon it.

Mr. WOESSNER. Exactly.

Senator SIMPSON. There continues to be a concern expressed that the State Department was involved in the initial decision by the Border Patrol officers to return Mr. Medvid to his ship. Could you please restate for the record under oath the first time that the State Department was notified of the Medvid case and where this fits in with the chronology of events.

Mr. WOESSNER. Yes, I am happy to do that. The chronology was that Medvid left the ship on October 24 on a Thursday. He was returned to the ship and was on board on the 25th, and INS representatives boarded the ship on Friday, the 25th, at 2:30 p.m. At that point, seaman Medvid was already under sedation.

The State Department was informed on Friday, October 25 at 3:40 p.m. That is the exact chronology. In other words, seaman Medvid was already back on board the ship at the time that the State Department was first informed of this.

Senator SIMPSON. Where was that first contact made to the State Department?

Mr. WOESSNER. I believe it came in to the Office of Soviet Affairs.

Senator SIMPSON. My 5 minutes have expired. I have another question or two. We might come to that. We will go to Senator Simon.

Senator SIMON. Yes, if I may follow up on the chairman's question. Did the 3:40 October 25 contact with the State Department, come from INS? Did it come from the White House? Where exactly did it come from?

Mr. WOESSNER. I believe it came from INS directly by telephone to the State Department, to the office of Soviet Affairs.

Senator SIMON. Then you mentioned the question of language. Who was the State Department interpreter you referred to?

Mr. WOESSNER. I think it was Lavrov. I am not sure. I could find out for you, Senator. He is a professional interpreter whom we hire on a contract basis. He is not a full-time State Department employee.

Senator SIMON. Do you know what language he speaks by birth, what language he was trained in?

Mr. WOESSNER. I know he—I am sorry.

Senator SIMON. Go ahead.

BEST COPY AVAILABLE

Mr. WOESSNER. I know he was born in Kiev and that he is bilingual, that is he is fluent in both Ukrainian and Russian. Whether what he spoke as a child and what he learned later, I will have to take that question and you will get an answer back.

Senator SIMON. Mrs. Padoch, who was the original translator, testified here that Russian was the third language of Medvid, that his initial languages were Ukrainian and Polish. That does not seem to square with the fact that he would be most fluent in Russian. Do you have any comments?

Mr. WOESSNER. That is correct. I was here when Mrs. Padoch said that. There is a contradiction between the two testimonies. The only thing I might note is Mrs. Padoch does not herself speak Russian, I believe, so would not have been in a position to judge whether Medvid's Russian was better than his Ukrainian. The State Department contract interpreter did speak both languages and spoke to Medvid in both languages, although primarily in Russian. Occasionally there would be, I understand, a bit of Ukrainian, and it was his judgment, as I say, to repeat, that Medvid's preferred language was Russian and that fact that he was better in Russian than Ukrainian, his command of the language.

Senator SIMON. And you have pursued that vigorously to your own satisfaction?

Mr. WOESSNER. Yes, sir.

Senator SIMON. As you reflect back on what happened, are there lessons to be learned? Have we learned any? Also, how are we going to improve our conduct in the future?

Mr. WOESSNER. Well, I think Commissioner Nelson addressed that quite candidly and openly when he was last here, and I should let him speak to that. There were lessons to be learned. Clearly, the prescribed notification processes were not followed in this case. But since it happened, as you can imagine, we have gone very searchingly through this whole case, step by step, as to the State Department involvement, when we were notified, what we did, and we promptly notified the Coast Guard to stop the *Konev* from leaving port. We dispatched somebody to the scene, we got an interpreter down there quickly, and we did our best to insure that seaman Medvid had an opportunity to express freely his wishes as to whether or not he wished to stay when we got him back in our custody.

We have examined our procedures and it is difficult to see that any change in procedures would materially have altered what the State Department did in this particular case.

Senator SIMON. I have no further questions, Mr. Chairman.

Senator SIMPSON. Senator Humphrey, please.

Senator HUMPHREY. Thank you. Mr. Chairman, I am unclear, is Secretary Woessner the witness for this whole matter or just——

Senator SIMPSON. Oh, no.

Senator HUMPHREY [continuing]. Prepared to testify——

Mr. WOESSNER. No, sir, I am prepared to address the State Department involvement, following up on the testimony I gave last November.

Senator HUMPHREY. All right. Well, I think I can address this question to you at least: On October 29, the Department of State released a statement about the Medvid matter. I guess it was the

BEST COPY AVAILABLE

first statement, but in any event, it is dated October 29 and says that, among other things, that a Navy physician conducted a preliminary physical exam, that Mr. Medvid appeared to be in generally good condition. That statement is dated October 29.

The State Department finally released the medical documents in connection with those exams on November 8, 10 days later. Why did the State Department wait 10 days to release the medical documents?

Mr. WOESSNER. I do not believe we had them in our possession, the full case, before that, but I am not sure.

Senator HUMPHREY. I am sorry?

Mr. WOESSNER. I am not sure that we had the full medical records in our possession before that. I believe it was being written up.

Senator HUMPHREY. Well, as a matter of fact——

Mr. WOESSNER. I can find that out.

Senator HUMPHREY [continuing]. The medical records were not released until a number of us screamed and yelled in public that we thought important information was being withheld. At that point, the Department of State agreed finally to release them. I am just wondering——

Mr. WOESSNER. Senator, I do not think it was within our power to release them before we had them, that is all. What I would have to find out for you is precisely when they came into our possession, but my recollection of events is there was no effort to hide anything from this committee. I think we shared the documents as we received them, including some things in executive session.

Senator HUMPHREY. Well, it strikes me that these documents were very important to the case and that the American people who were very concerned at that moment and over that period of 10 days about the matter as it was unfolding certainly were entitled to know about these reports and to see them and to reply that they were not released because I guess it took 10 days for them to make their way from Louisiana to Foggy Bottom is not an awfully convincing reply.

Mr. WOESSNER. I am sorry, sir, I will look into the progress of those papers.

Senator HUMPHREY. The State Department release of October 29, as I said, stated that Mr. Medvid was in "generally good condition." We have since established that the physical exam on which that conclusion was based did not include a urinalysis or blood exam, even though our officials knew that Mr. Medvid had been drugged by the admission of the Soviet physician aboard.

How could we come to the conclusion, which was such a critical conclusion—this was not just a casual conclusion that did not amount to much, this was a critically pivotal conclusion that dictated our subsequent behavior and the subsequent fate of Mr. Medvid, whatever that may be or have been—how could we conclude, how could the department conclude that he was in generally good condition when the physical exam did not even include one of the most basic tests to which all of us have been exposed in the most perfunctory physical exam, namely a urinalysis?

Mr. WOESSNER. Senator, that of course is a medical judgment. At the time that the physical examination was conducted, the ques-

BEST COPY AVAILABLE

tion was raised, whether or not a blood test or a urine test should be taken. The response of the physician at the time was that it was not necessary and they have since stood by that decision and, no doubt, you will have a chance to question him here this morning.

Senator HUMPHREY. May I ask the Chair or the staff or someone who knows what time the testimony of Secretary Woessner became available to the committee this morning?

Senator SIMPSON. I would ask the staff when the testimony of Mr. Woessner first became available to the subcommittee.

Mr. DAY. We got a corrected version of the report just before the hearing. There was a word change from "birthmark" to "mark" from the previous version of the testimony which we received yesterday.

Senator HUMPHREY. The difficulty that we all face in all hearings is that we are confronted with testimony which is too lengthy to be read into the record and so we get abbreviated testimony and then it is kind of hard to read the entire testimony and listen to the witness while he is presenting his abbreviated testimony. You do not really have time to examine the testimony carefully beforehand, think about it, discover any inconsistencies, if any, and to propound a line of questioning that will get to the bottom of the matter, and we are faced with that situation right here and that is yet another reason that I contend that a hearing, the hearing process is simply insufficient, simply is not an aggressive discovery procedure for which this case cries out. And I am not prepared, under the circumstances which we work under here and in all hearings, to really be able to pursue this the way I would like.

Nonetheless, I am grateful for whatever opportunity we have at the moment.

Senator SIMPSON. I thank you. Senator Humphrey, let me say that the doctors will soon be testifying and at that time it is very appropriate that you direct any questions about the blood-urine test issue. If you wish to go further in any line of inquiry, you have but to notify me and we will schedule a hearing to accommodate that.

Senator HUMPHREY. You see, Mr. Chairman, if I may reply, I, like you, have more turf than I can handle. I do not propose to be an investigator. I think that is why we need a dedicated staff of investigators, with no other responsibility, otherwise we are not going to get to the bottom of this case as we have a responsibility to do, in my opinion.

Senator SIMPSON. Yes, I agree with that totally, but each one of us at this table has some serious and sincere issue we wish to address in this Congress——

Senator HUMPHREY. Yes.

Senator SIMPSON [continuing]. And I have some that are very deep in my bosom that I an unable to proceed with. I am sure Senator Metzenbaum does, and Senator Simon. I have great admiration for you, I know of your sincerity, I know the depth of your feelings in this. But if we just simply direct all the engines of this place to one issue which has a deep, rich feeling in our gut we will end up frustrating our efforts. We nearly do that now with our rules. That is the problem as I see it. If a commission were established, with new staff people, but they are not going to use the pro-

BEST COPY AVAILABLE

fessional staff of the subcommittee which has been here for 20 years, whether it is Mr. Day or Mr. Tinker or others, then it seems to me that that does not get where you want to get either.

Now, I think that the hearing today hopefully will reveal many or at least open up the important areas, and if those areas open I will continue to pursue it, and that is all I can say.

Now to Senator Metzenbaum for 5 minutes.

Senator METZENBAUM. Mr. Woessner, what is the usual procedure when somebody jumps ship? When is the State Department normally notified?

Mr. WOESSNER. I will have to check that, but I believe as soon as the person——

Senator SIMPSON. Would you pull that microphone up, Mr. Woessner, please?

Mr. WOESSNER. I am sorry—as soon as the person in question indicates a desire to defect, that is, to seek political asylum and remain here. I believe at that point the Immigration Service will normally notify the State Department.

Senator METZENBAUM. In this case, Mr. Medvid jumped ship on the 24th at about what time?

Mr. WOESSNER. I do not have the time here, sir. It should be in previous testimony.

Senator METZENBAUM. Do we know whether it was in the morning or the afternoon. Let me see, I think I have it here——

Mr. WOESSNER. Late afternoon, I am told.

Senator METZENBAUM. Maybe even at night, 11:30 p.m. is what this record of a deportable alien seems to suggest, on the evening of the 24th. Normally then, the State Department would be notified immediately by the Coast Guard?

Mr. WOESSNER. I believe so, yes, sir.

Senator METZENBAUM. In this case you were not notified until 3:40 the following afternoon?

Mr. WOESSNER. That is correct, sir.

Senator METZENBAUM. You then sent an interpreter down from New York?

Mr. WOESSNER. No; we dispatched someone from the State Department, a State Department officer, and then we made arrangements to have an interpreter join them there in New Orleans.

Senator METZENBAUM. When did the person from the State Department arrive and when did the interpreter arrive?

Mr. WOESSNER. Let us see, the State Department person went down I know late that afternoon, he was in place in New Orleans in time to board the ship at 10:30 that evening. I believe the interpreter got there the next day, on Saturday.

Senator METZENBAUM. So the man jumped ship on Thursday night——

Mr. WOESSNER. Thursday night.

Senator METZENBAUM [continuing]. And the interpreter did not get there until Saturday.

Mr. WOESSNER. That is correct.

Senator METZENBAUM. And all of that time he was on the ship?

Mr. WOESSNER. He was returned to the ship, if you recall——

Senator METZENBAUM. When was he returned?

Mr. WOESSNER. He was returned on Friday.

BEST COPY AVAILABLE

Senator METZENBAUM. Before you were notified?

Mr. WOESSNER. Excuse me, let me get—I do not have the exact times here. They were covered in the earlier testimony.

Mr. BRANDEMUEHL. He was returned at 1:30 a.m., on the 25th. It was very early in the morning, it was during that night.

Senator METZENBAUM. So he was returned almost 2 hours—his report that I have says 11:30 p.m., so according to that he was almost immediately returned to the ship.

Mr. WOESSNER. Do you know how many hours he was on shore altogether?

Mr. BRANDEMUEHL. About 2½ hours.

Senator METZENBAUM. Is that not a very unusual procedure, almost unique, or is that the customary procedure?

Mr. WOESSNER. I think Immigration would have to address that.

Mr. BRANDEMUEHL. Senator, it is usually customary, if there——

Senator METZENBAUM. Excuse me, would you identify yourself for the record, please?

Mr. BRANDEMUEHL. My name is Roger Brandemuehl, Assistant Commissioner for Border Patrol.

Senator SIMPSON. And you will be testifying in just a few moments, so I share that. He will be a part of the testimony.

Senator METZENBAUM. But you can proceed to——

Senator SIMPSON. Oh, yes, indeed.

Mr. BRANDEMUEHL. That would be about normal. They had him in custody. Mr. Medvid was turned over to the Border Patrol at about 10:45 p.m., on the 24th. They kept him in custody, they interviewed him, they photographed him and finished processing him and then they returned him to the steamship agent shortly after midnight, who then took him back to the vessel at the Border Patrol's direction. He arrived there at about 1:30 a.m., in the morning.

Senator METZENBAUM. I just ask you one last further question, because I do not want to interrupt the normal procedure. Is that the normal procedure, to return somebody who is jumping ship and claiming political asylum, to immediately return them to the ship?

Mr. BRANDEMUEHL. Not if they are claiming political asylum. As we have mentioned before, the statement was made that the agents did not recognize this as a political asylum applicant and therefore they returned him, as is normal—we have a lot of crewmen that get off and get drunk or they just missed their ship and we immediately pick them up and take them back and get them on board the ship.

Senator METZENBAUM. Thank you. I do not want to debate the issue, because I think there is an appropriate time when you are the witness, but I want to point out that this record of deportable alien says "subject claims that he jumped ship in the United States for political and moral reasons." He could not have been more direct about why he had jumped ship, according to his representations to the people at Customs.

I will come back to you, Mr. Woessner. Is there a normally accepted procedure for cases where an individual jumps ship or defects or whatever, that the State Department is notified immediately or is supposed to be notified prior to returning the individual to the Soviets, Poles or whomsoever it may be?

BEST COPY AVAILABLE

Mr. WOESSNER. Yes, if it is clear that he has asked for political asylum——

Senator METZENBAUM. I cannot hear you, sir.

Mr. WOESSNER. If it is clear that he has asked for political asylum, then the responsible authorities at the port or whatever would notify the State Department, that is correct.

Senator METZENBAUM. So in this case that was not done.

Mr. WOESSNER. It was not done.

Senator METZENBAUM. Thank you, sir.

Senator SIMPSON. I thank you, Mr. Woessner. It has been very helpful. I have a couple of other questions, one particularly as to the issue of Ambassador Jack Matlock and his meeting with the delegation of Ukrainian-Americans, and I would like to have you respond to that question. I will present that in writing. I do not want to reopen here the series, but I would like your response.

Senator METZENBAUM. We all yield to you, Mr. Chairman, you have got prerogative, without claiming equal time.

Senator SIMPSON. Let me ask that then. That is the one last question that I would ask. I will just say it, because it seems to concern the Ukrainian community, that our Ambassador of the National Security Council met with a delegation of Ukrainian-Americans on the same morning that Mr. Medvid was interviewed, that is the second time, by State Department officials. The Ambassador reportedly told that delegation that Medvid was being interviewed in an American setting with U.S. personnel only present, and he went on apparently to say that that was normal procedure for the interview of potential defectors. Could you comment on that statement as it has been related to the committee?

Mr. WOESSNER. Mr. Chairman, I think there must have been some genuine misunderstanding here. Ambassador Matlock is one of our most senior and distinguished Soviet experts. He has served in the Soviet Union. A good part of his career has been devoted to Soviet-American relations, and he knows what the normal procedure is, namely that there would be Soviets present at any such interview, and therefore I cannot believe that he could have said it would have been American only.

I think what he assured them was that this would be an American setting, that is something under our control, which it was, a Coast Guard vessel and a shore facility, and that we would control the interview, which we did. But I cannot believe he would have said that there were no Soviets present.

Senator SIMPSON. Thank you very much. We appreciate having your——

Senator SIMON. Mr. Chairman?

Senator SIMPSON. Yes?

Senator SIMON. If I could, Mr. Chairman, have one other question because we have passed around some pictures here that presumably are the same person. I am not trained in this field in photography and identification. I have to say that, while it looks to me like it may very well may be the same person, the photographs themselves do not lend themselves to the kind of certitude that is in your statement, at least to me. Have you had people who are experts in identification take a look at there photographs to make sure we are in fact talking about the same person?

BEST COPY AVAILABLE

Mr. WOESSNER. The certitude is based on the photograph that was taken when he was interviewed by the INS authorities, by the Border Patrol, and this was the photograph that our representative had when he went on board. That together with the personal identification of an INS official——

Senator SIMON. Have you seen these photographs?

Mr. WOESSNER. I am not sure which ones you are referring to.

Senator SIMON. These are the photographs we are talking about. One is just a straight head-on photo, as you can see.

Mr. WOESSNER. Yes, we have the color photo, the small one. That looks like a black and white enlargement of it.

Senator SIMON. OK. Then there are some other pictures that were apparently taken by I do not know whom, but they apparently are to verify that these are the same person. Have you seen these pictures?

Mr. WOESSNER. I did see them.

Senator SIMON. Is that the basis for saying these are the same people?

Mr. WOESSNER. No. As I say, the basis for saying that it was the same Medvid, that there was no switch, was on this chain of human observation, reinforced by the photograph that was taken when he was interviewed on shore and our representative when he went on board ship, had that photograph with him when he saw the sailor in sick bay.

Senator SIMON. Thank you.

Senator SIMPSON. Thank you very much, Mr. Woessner, you have been very helpful.

Mr. WOESSNER. Thank you.

RESPONSES TO QUESTIONS SUBMITTED BY SENATORS SIMON AND HUMPHREY

Question. With respect to the Department of State interpreter, what was the native language he spoke at birth and what language was he trained in?

Answer. The Department of State interpreter was born in Kiev; he used Russian as his childhood language. He learned Ukrainian in high school and college in the United States. He uses both Russian and Ukrainian professionally.

Question. When did the Department of State obtain the medical reports on Seaman Medvid? Why did the State Department wait so long to release them?

Answer. The written medical and psychiatric reports were received in the Department of State on or about November 6. They were made available to the Subcommittee on Immigration and Refugees for use in Executive Session on November 6. Slightly edited versions of the report were released to the press shortly thereafter, on or about November 8.

BEST COPY AVAILABLE

QUESTIONS FROM SENATORS GRASSLEY AND DENTON SUBMITTED BY THE SUBCOMMITTEE TO THE DEPARTMENT OF STATE FOR RESPONSE SUBSEQUENT TO THE HEARING

Q) I understand that the State Department negotiated with Soviet officials the ground rules that were used for interviewing Seaman Medvid after his initial return to the Marshal Konev. What precisely were those ground rules? Are these always negotiated on a case by case basis or does the State Department have a set of guidelines to follow. If so, what are they? Were there any differences between the Medvid meeting and other confrontation meetings that have been held with potential Soviet defectors?

A) The case of Seaman Medvid differed from other potential defector cases because Seaman Medvid had already been returned to Soviet custody and was aboard the Soviet ship Marshal Konev before the Department of State was informed of the case. The Department of State did negotiate with the Soviets to arrange the transfer of Seaman Medvid from the Marshal Konev to the U.S. Coast Guard Cutter Salvia. However, we did not negotiate the subsequent transfer of Seaman Medvid from the Cutter to the naval shore facility and the Soviets strongly protested that transfer. Nor did we negotiate the ground rules used for the October 28 and 29 interviews with Seaman Medvid. He was interviewed in accord with standard procedures for such interviews. Under these guidelines, the State Department representative conducts the interview, only one Soviet representative is allowed to speak for the Soviet side, the Soviet side is not allowed to threaten or intimidate the individual being interviewed, and the potential defector must himself respond to the questions posed by the Department representative.

Q) Could you provide a complete list and chronology of any exchanges that took place between U.S. Government officials and Soviet officials about the Medvid case?

A) As a matter of policy, we do not comment on the details of our diplomatic discussions with the Soviets on this or other issues. I can assure you, however, that it was made clear to the Soviets that Seaman Medvid would not leave the United States until we were satisfied that his decision to depart was voluntary. It was also made clear to the Soviets that we were prepared to take whatever means necessary to remove him from the M.V. Konev to interview him in order to determine his wishes.

Q) During the State Department interviews, did any of the four Soviet representatives present speak with Mr. Medvid? If so, who spoke and what were the substance and tenor of the remarks?

A) During the interviews on October 28 and 29, one Soviet representative was allowed to make an opening statement. During the interview the Soviet representative objected to some questions and tried at several points to bring the interview to a close, stating that Medvid had expressed his views and that that should be sufficient. We firmly rejected his comments.

BEST COPY AVAILABLE

Q) Did Soviet officials ever, directly or indirectly, preclude Medvid from answering any question? If so, what were the questions?

A) The interviews on October 28 and 29 took place at locations under U.S. control. Soviet officials were not allowed to prevent Seaman Medvid from responding to any questions during the interviews.

Q) I understand that Mr. Medvid declined to answer some of the questions put to him during his interviews. What were these question? Did this occur in both interviews: the one abroad the Coast Guard cutter Salvia and the one at the naval base?

A) Seaman Medvid did not decline to answer any questions. However, in response to some questions concerning events of October 24 and what happened following his return to the ship on October 25, he sometimes replied that he could not recall.

Q) I have just learned that the State Department has no transcripts of the interviews that took place at the naval air station. In November, through my staff I made several efforts to obtain copies of the State Department interviews with Medvid. I was told that no transcription was yet completed. On one occasion only, I was advised that there had been some technical problem that had resulted in an incomplete record of the State Department interviews. The impression was clearly left, however, that although there apparently were no tapes of the first Border Patrol interview with Medvid, we had tapes of all subsequent interviews. Why was I not informed during my inquiries about the transcripts that there was no recording at all of the interviews at the Naval Station?

A) On November 6 the Department of State notified the Chairman of the Senate Subcommittee on Refugees and Immigration by letter that due to an equipment malfunction, no transcript existed for the October 29 interview with Seaman Medvid at the Naval station. On January 28 the transcript of the October 28 interview which took place aboard the U.S. Coast Guard Cutter Salvia was transmitted to the Subcommittee Chairman. We regret that there was any misunderstanding concerning these facts.

Q) If there was a malfunction of the recording equipment, when was that malfunction discovered? Was there no check of the equipment during a break in the questioning?

A) The actual taping was done by the Immigration and Naturalization Service (INS). Questions concerning the malfunction of the equipment should be addressed to that agency.

Q) I understand that no American remained with Medvid in the sickbay of the Marshal Konev between the time U.S. government officials boarded the Konev at 3 p.m. on October 25 and late afternoon on the 26th, when a decision was made to remove him to the Coast Guard cutter Salvia. Inasmuch as he was under restraints and heavily sedated at the time, why would you not have insisted that an American remain with him in the sickbay of the Marshal Konev?

BEST COPY AVAILABLE

A) The American officials who saw Seaman Medvid aboard the M.V. Konev on Friday afternoon, October 25 were instructed to leave the sick bay by the Captain of the M.V. Konev. To defy that order at that time -- i.e., before we had an opportunity to devise plans for the use of force, if necessary -- could have risked lives or physical injury. However, because of our concern about the health and condition of Seaman Medvid, we insisted that a U.S. medical doctor be permitted to examine him on Saturday, October 26. At that time he determined that Seaman Medvid was alert and in generally good physical condition.

Q) Under normal State Department operating procedures the Bureau for Human Rights is the division of the State Department tasked with the responsibility for political asylum cases. I understand that in the case of Miroslav Medvid, all of the decisions made and undertaken by the Bureau of European and Canadian Affairs. For example, it was a representative of that office that went to New Orleans for the interviews with Medvid. Likewise, it has been officials from that office that have testified before this subcommittee and served as liaison on the Medvid matter. Why has the Medvid affair been handled by the Bureau of European and Canadian Affairs since the outset, rather than the normal Bureau of Human Rights?

A) Under normal circumstances, interviews with potential defectors who may be seeking asylum are carried out by the Immigration and Naturalization Service (INS), under the general direction of the Attorney General. If an asylum application is actually filed, the Bureau of Human Rights and Humanitarian Affairs, as outlined in section 820 of the Foreign Affairs Manual and Title 8 Code of Federal Regulations 208.7, coordinates the Department of State's action between geographic and functional bureaus and provides an advisory opinion on the merits of the application. However, the case of Seaman Medvid was not normal because he had already been returned to Soviet custody aboard the Marshal Konev. The Department of State was informed of the matter only after these events took place. The Department of State immediately initiated discussions with the Soviets to arrange for his transfer to U.S. custody aboard the U.S. Coast Guard Cutter Salvia where he could be interviewed to determine what his intentions actually were. As a matter of practice, interviews with defectors involving the participation of representatives of another country are normally conducted by the appropriate regional bureau whose responsibilities include bilateral relations with the country in question. Therefore the bureau with responsibility for bilateral relations with the Soviet Union was the appropriate one to join with the INS for the interviews on October 28 and 29. The Bureau of Human Rights and Humanitarian Affairs was, however, consulted about the case of Seaman Medvid.

Q) The military doctor that examined Seaman Medvid testified that he was tasked to find out three things: was Medvid alive, whether the person identified on the freighter as Medvid the same person that was interviewed by the Border Patrol, and, finally, whether there was a life-threatening situation that required immediate action. Did you at any time task either doctor who examined Medvid to look specifically for signs of torture and intimidation?

BEST COPY AVAILABLE

A) The testimony cited above appears to refer to a response by the military doctor to a question concerning the initial medical examination of Seaman Medvid aboard the M.V. Konev on October 25. When the U.S. Navy doctor and the U.S. Air Force psychiatrist examined Seaman Medvid on October 28 and 29 at the U.S. naval shore facility under our control, they were specifically asked to determine if he was mentally and physically competent to make a decision concerning whether he wished to remain in the United States or return to the Soviet Union. That Seaman Medvid may have been tortured and/or intimidated was certainly a factor in their decision-making; the psychiatric report on Seaman Medvid in fact speculates about such pressures, although we will probably never know what happened to Seaman Medvid after he was returned to the M.V. Konev early on the morning of October 25. However, we do know that the two U.S. military physicians who examined Seaman Medvid when he was in our custody on October 28 and 29 concluded that he was mentally and physically competent to make his decision at the time he was interviewed.

Q) In your discussions about what to do with Medvid was the possibility of intimidation and torture ever discussed? Do your policies regarding political asylum requests and confrontation meetings provide a way to take intimidation into account, that is intimidation that takes place while in Soviet custody?

A) The possibility that Seaman Medvid may have been intimidated was prominent in our handling of the case. We were and are under no illusions about the repressive nature of the Soviet Government and its willingness to use coercion and threats to control its people. We were not able to recreate Seaman Medvid's original frame of mind of October 24 nor will we ever know what pressures may have been exerted on him while he was on the Soviet ship prior to his transfer to our custody on October 28. From the outset there was always the possibility that Seaman Medvid would decide to return to his ship and that if he did so, we would have to respect that choice. In cases such as this, only the individual involved can decide what action to take in light of the risks and personal costs involved for himself or for others. It was not a decision we could make for him.

Q) What recourse does the State Department have if it ascertains that a Soviet official has used torture or intimidation to force a potential defector to recant?

A) It would depend on the facts of the particular case and whether the official enjoys immunity from U.S. criminal prosecution pursuant to any international agreement or customary international law. If the individual did not enjoy such immunity and was under our jurisdiction, we could prosecute the individual for any crime committed here.

Q) Allegations have been made that threats were used to deter any efforts by individuals working in New Orleans to slow or prevent the departure of the MARSHALL KONEV from U.S. waters. Are you aware of any threats being delivered?

A) We are not aware of any such threats.

BEST COPY AVAILABLE

Q) Did the State Department or any other government entity do anything to expedite the departure of the Marshal Konev? For instance, were inspectors instructed by Washington or by local federal government officials to expedite their inspections and leave the ship?

A) To the best of our knowledge, neither the Department or State nor any other government entity did anything to expedite the departure of the M.V. Konev. Seaman Medvid returned to the M.V. Konev for the second time on October 29. The M.V. Konev departed New Orleans on November 9 after loading its cargo of grain in accordance with the established loading schedule.

Q) Ukrainian groups located in boats in the area of the Marshal Konev have reported that they asked to be inspected by the Coast Guard on the eve of the departure of the Marshal Konev , but were denied the request. Instead, they tell us, the Coast Guard insisted on conducting lengthy two hour inspections during the departure of the Marshal Konev . First, is this report by the Ukrainian groups essentially factually correct? Second, who gave the order that these inspections be conducted? Third, given the availability of Coast Guard arrest powers if trouble subsequently developed, what is your statutory or constitutional justification for using safety or drug inspections to harass boat owners and prevent them from exercising their constitutional rights to Free Speech?

A) Questions concerning any specific inspection of private boats by the U.S. Coast Guard prior to the departure of the M.V. Konev will have to be addressed to the Coast Guard. At no time did the Department of State request the Coast Guard to inspect any private boats. We did request the Coast Guard to ensure the security of the M.V. Konev and to maintain the order of the harbor.

Senator SIMPSON. Now, the Commissioner, please, of the Immigration and Naturalization Service, Al Nelson, accompanied by Roger Brandemuehl, the Assistant Commissioner for the Border Patrol.

It is nice to have you here. I would appreciate your summarizing your testimony in the appropriate 5-minute period.

TESTIMONY OF ALAN C. NELSON, COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE, ACCOMPANIED BY ROGER P. BRANDEMUEHL, ASSISTANT COMMISSIONER, BORDER PATROL, IMMIGRATION AND NATURALIZATION SERVICE

Mr. NELSON. Mr. Chairman and members of the committee, I am pleased to return. As you recall, I did testify in November on the matter. We have testimony that we would like to submit for the record. It is joint testimony of Mr. Brandemuehl, Assistant Commissioner of INS for Border Patrol, who was identified earlier, and we will both be testifying. I will make a couple of quick points.

Senator SIMPSON. Mr. Nelson, let me swear you both this particular time, if you will raise your right hand, please.

[The witnesses were sworn.]

Senator SIMPSON. Thank you. If you will proceed.

BEST COPY AVAILABLE

Mr. NELSON. I want to ask, Mr. Chairman, that you incorporate in the record both the testimony submitted today as well as a copy of the earlier testimony since it is related. I believe the testimony as we submitted it before is still very relevant and I will just touch on a couple of issues.

Senator SIMPSON. Without objection, and let me interject for the record that—and Mr. Woessner, if I might, while Mr. Woessner is in the room, I would like to have you present for the record a chronology of this issue from the first apprehension, the State Department notification, to return to the ship, all of that. I want that in very precise manner, please, for the record.

Please proceed, Mr. Nelson.

Mr. NELSON. Mr. Chairman, I will just make several comments aside from the testimony and then let Mr. Brandemuehl summarize some of the key points of his testimony since he was present in New Orleans at the time and I know you are particularly interested in his observations.

On asylum procedures, I understand you will probably have a followup hearing on that, let me just reiterate testimony previously the procedures we believe are fundamentally sound. We still believe that. What we have done since then is a thorough review of all procedures relating to asylum cases generally, particularly of Soviet Bloc people.

We have put out additional information to our field, set up additional training operations and so forth. But to reiterate what is already there and to reiterate other procedures, we will be happy to elaborate on that at a later time, but I wanted to reiterate it.

On the other aspects, as we pointed out in our other testimony, we have candidly stated that the Border Patrol agents involved unfortunately did make mistakes. We are satisfied that there was nothing malicious or otherwise, that they did not exercise proper judgment or follow the procedures. That has been clearly stated.

We are in the process of disciplinary action. We have gone through civil service procedures in notifying them of the proposed discipline. I, as the hearing officer, if you will, had an oral session at their request just last week, January 31, in which they presented some of their considerations along with their counsel. I will be making a decision shortly on the discipline and then, of course, if they decide to proceed and are not satisfied, they can do so through the Merit Service System Protection Board.

A third point, as indicated in the testimony, I would call to your attention is reference the nine separate actions by the Federal courts in this country, including the U.S. Supreme Court that dealt with this matter.

I think it is important for you, as Members of the Senate, as well as the public and others, to realize that the judicial branch of this Government, as well as the executive and legislative, has dealt with this issue and in each case the courts have sustained the action taken by the executive branch.

And the last point I wish to make, Mr. Chairman, is the basic issue of——

Senator METZENBAUM. Would you just explain that? I do not understand that——

BEST COPY AVAILABLE

Senator SIMPSON. Could we wait until the statement is completed and then I will give you——

Senator METZENBAUM. I thought just maybe——

Senator SIMPSON. I would prefer to have the statement completed and then I will come to you and give you——

Senator METZENBAUM. All right, I will yield to you.

Senator SIMPSON. Thank you

Mr. NELSON. The last point I will make, Mr. Chairman, is I think the bottom line decision of the U.S. Government, the State Department, the INS, and others involved, the doctors who were involved, under the circumstances in the interview of Mr. Medvid after he was taken off the vessel, that the only reasonable conclusion was that he should be returned to the vessel of the Soviet Union because he consistently, repeatedly demanded to do so, requested to do so, at no point indicated any desire to the contrary.

For the U.S. Government to ignore the wishes of an individual under those circumstances and with that evidence, it would seem to be contrary to our issues of fairness and, again, that is an issue that I think needs to be clearly stated.

At this point, Mr. Chairman, I would defer to Mr. Brandemuehl to complete the testimony and be available for your questions.

Thank you.

Senator SIMPSON. Thank you. Mr. Brandemuehl.

Mr. BRANDEMUEHL. Thank you, Mr. Chairman and members of the committee. I do appreciate the opportunity to appear here as a witness today in the case of Soviet seaman Miroslav Medvid. I would like to make just a few comments concerning this case. My testimony focuses upon the reinterview of Mr. Medvid conducted by the Department of State and the Immigration Service.

At the time we interviewed Mr. Medvid, I am convinced that, for whatever reason, he decided to return home, it certainly could have been because he was intimidated or threatened, maybe even offered enticement. And I am sure it would not have been uncommon for the Soviets to have promised him that he would go home a hero if he put us in our place.

However, repeatedly Mr. Medvid stated that he wanted to return home to his mother and father. After the completion of the interviews and with the input from the doctor and the psychiatrists, I am convinced that Mr. Medvid was capable of making a decision and he was capable of making a rational choice.

He was alert and responsive to our questioning and he appeared to be in control of all his faculties. We gave him every opportunity to say that he wanted to stay in the United States. A non-threatening site or a neutral site was provided for the interviews. Two separate interviews were conducted and probably the most important thing was that we demonstrated to Mr. Medvid that we had firm control over the situation.

When it was decided to remove Mr. Medvid from the Coast Guard buoy tender to the Navy base in Algiers, LA, the Russians opposed this vigorously, and I mean vigorously. In spite of this, we gave them an ultimatum and had the means to back it up.

Also right here I might note that if the Russians had not consented to the interview in the first place, we were fully prepared to

59-577 O - 86 - 2

BEST COPY AVAILABLE

take the steps necessary to physically remove him from his vessel for an interview.

I was sent to New Orleans at the direction of Commissioner Nelson for the following reasons, to assist the Department of State in a reinterview of crewman Medvid, to initiate an investigation surrounding the crewman's initial contact with this agency, and to formulate an operational plan to physically remove Medvid from the Soviet vessel if negotiations with the Soviet Embassy and the Department of State to reinterview him failed.

I was given no specific instructions, only that I was to ascertain what happened initially and to assist in reaching a resolution in this case in as fair and equitable a manner as possible.

In summary, I would just like to state that the United States negotiated the interviews with the Russians for the express purpose of determining whether or not he wanted to, Mr. Medvid wanted to remain here in the United States.

To prevent Mr. Medvid's return to Russia would have been contrary to his desires expressed during these interviews. At each setting, Mr. Medvid stated he wanted to return home to see his mother and father. He must have said that at least a dozen times.

If we had forcefully kept him, we could not have predicted his future behavior, and to impose our will on Mr. Medvid could have increased additional emotional pressure on him and the Russians would most likely retaliate in some manner, that is imposed their will on some of our crewmen or other Americans at their whim.

Therefore, in view of Mr. Medvid's adamant claims that he wanted to return home and his written request, we felt we had no alternative but to honor his wishes, therefore we let him return to his vessel.

That concludes my testimony. Thank you.

[The complete statements of Mr. Nelson and Mr. Brandemuehl follow:]

BEST COPY AVAILABLE

Prepared Statements of Alan C. Nelson and Roger B. Brandemuehl

Chairman Simpson and Members of the Committee, INS wishes to thank you for the opportunity to once again testify before your Subcommittee. We welcome this opportunity to clarify several specific issues about which there has been a great deal of misinformation. Attached for your information is my original testimony of November 5, 1985. Our prepared remarks will be concerned with the following areas: 1) The identification process to insure that the man interviewed was really Seaman Medvid; 2) Accounts from INS agents present concerning Seaman Medvid's desire to return the the Soviet Union; and 3) Direct observations of Seaman Medvid's behavior.

Identification Process

It has been alleged that the individual interviewed during the lengthy negotiations on the Marshal Konev was not the same person who initially jumped ship. The identification process that establishes that we were dealing with the same person throughout is as follows:

1) At the time of the first encounter by the Border Patrol on October 24th, Medvid was photographed, fingerprinted, and interviewed by two INS agents.

2) On October 25, our Deputy Chief Patrol Agent -- accompanied by one of the officers who originally interviewed Medvid and accompanied by a third agent -- boarded the Soviet ship. They secured Medvid's passport from the captain and went to the sickbay where the agent who originally encountered Medvid personally identified the individual confined as Medvid.

3) The number of people who could positively identify crewman Medvid was further expanded on October 26, when the State Department representative and a U.S. Navy physician, accompanied by our agent, visited Medvid in the sickbay.

BEST COPY AVAILABLE

4) Subsequently, when Medvid appeared on board the Coast Guard Cutter Salvia for interview he was positively identified by the Deputy Chief Patrol Agent who saw him on October 25th, the State Department representative and the U.S. Navy doctor.

5) From the time Medvid arrived on the cutter on October 28th, until he was returned to his vessel, he was consistently in the presence of U.S. officials who could positively identify him.

Sequence of Events

On October 28, 1985, as a result of diplomatic discussion between the Department of State and the Soviet Embassy in Washington, D.C., it was agreed that Seaman Medvid would be transferred from the M/V Marshal Konev to the United States Coast Guard Cutter Salvia for an interview in a non-threatening environment under U.S. control. The meeting was scheduled to occur at approximately 4:30 p.m. Representatives from the Immigration Service and the Department of State were selected, including Mr. Brandemuehl. The other members of the United States delegation were the interpreter and a United States Navy physician. The Soviet delegation consisted of Medvid, the Captain of the M/V Konev, the ships' doctor, and two officials from the Soviet Embassy.

The United States interview team arrived on board the Cutter Salvia at approximately 4:30 p.m. with the Russian delegation arriving approximately 30 minutes later. The group assembled in the cutter's wardroom and the interview of crewman Medvid commenced with the State Department taking the lead in establishing the ground rules. The State Department would speak for the United States delegation, and the United States interpreter would translate Medvid's responses.

The INS observers noted that Medvid appeared intially quite nervous. Within minutes, he stated he was nauseous and requested to be moved outdoors. This request was granted. Subsequently Medvid was brought back

BEST COPY AVAILABLE

to a cabin , allowed to lie down, and was examined by the United States doctor. Within 15-20 minutes Medvid stated he was ready to resume the interview and the group reconvened in the wardroom.

The State Department representative then asked Medvid a series of questions surrounding the circumstances of his departure from his vessel the night of the 24th, what happened on shore, and the events surrounding his returned to Konev.

During this process, the Department of State representative painstakingly and repeatly explained to Medvid that if he wanted to remain in the United States he could do so immediately without fear of being incarcerated, punished, or having reprisals taken against him in any manner. In spite of these assurances, Medvid stated on numerous occasions that he wanted to return to the USSR.

At approximately 9:30 p.m. on October 28th, after consultation with superiors in Washington, the State Department representatives advised the Soviet delegation that the United States thought it prudent to move Medvid ashore where he could be further examined by our doctor and be given an opportunity of a good night's rest.

The Soviet delegation objected vehemently to this; however, when given an ultimatum of either accompanying Medvid or being returned to the Soviet Vessel without Medvid, they chose the former.

Had the Soviets not consented to our requests, the Immigration and Naturalization Service had in place extensive arrangements to remove Medvid if necessary.

On October 28th at approximately 11:15 p.m., Seaman Medvid and the accompanying United States and Soviet representatives were transferred to a nearby Naval Facility. Upon arrival at the facility Medvid wes given a thorough medical examination and a psychological evaluation. He remained

BEST COPY AVAILABLE

alone in his room with Border Patrol agents standing guard in the hallway. While in our custody, at no time, was Medvid allowed to be alone with Soviet representatives.

The next morning after breakfast, Medvid participated in an extensive interview with a United States Air Force psychiatrist. On October 29, at around 12 noon the United States and Russian representatives convened a second interview of Seaman Medvid.

The State Department official again asked the same series of questions as posed at the first interview and essentially received the same answers. There was, however, one substantial change in Medvid behavior. He became increasingly belligerent toward the United States delegation. Again, the State Department assured Medvid that if he elected to remain here he would not be subject to prosecution or forced to return to his ship or to the Soviet authorities. Notwithstanding that Medvid was provided these assurances, and he was on more than one occasion alone with a U.S. representative, he insisted upon returning to the U.S.S.R. and voluntarily made a written request to do so.

Mr. Chairman, I sincerely believe the United States Government responded properly to this situation, once we learned of our mistake. I believe that the Departments of Justice and State did everything in their power to provide that Soviet seaman with the understanding of his options, including the clear alternative to remain here in the United States. Extensive interviews, mental and physical examinations were conducted over a 24-hour-period in a setting totally under U.S. control. Following those interviews and examinations, it was the strong belief of all U.S. government representatives that the Medvid written statement represented his true wishes. To have refused Medvid's express and repeated requests to return to his vessel under such circumstances would have been an improper action for the United States.

BEST COPY AVAILABLE

In addition to the foregoing, I believe it is especially noteworthy that several U.S. Courts -- including the U.S. Supreme Court -- were unpersuaded by allegations that the government's actions regarding Seaman Medvid were illegal, suspect, or arbitrary and capricious. The following courts have sustained the government's decision:

- The U.S. District Court for Eastern District of Pennsylvania on October 31, 1985, denied a motion for a temporary restraining order or preliminary injunction;

- The U.S. District Court for the District of Columbia on November 1, 1985, denied a temporary restraining order stating that the government was found to have made a bona fide effort to ascertain whether Medvid sought asylum and its negative conclusion was neither arbitrary nor capricious;

- The U.S. Court of Appeals for District of Columbia Circuit on November 5, 1985, affirmed the lower court's decision stating that the government's decision to return Medvid to the Soviet vessel after extensive interrogation and medical examination was not arbitrary or capricious;

- The U.S. District Court for Eastern District of Louisiana on November 6, 1985, denied a temporary restraining order as not in the public interest, finding that the agencies charged with decision-making responsibility did not act unreasonably under the law;

- The U.S. District Court for the Eastern District of Louisiana on November 8, 1985, denied a petition for habeas corpus, finding that the government officers did not have custody over Medvid.

- The U.S. Supreme Court on November 8, 1985, denied immediate injunctive relief for the matters before the District of Columbia Circuit.

BEST COPY AVAILABLE

- The U.S. District Court for the Eastern District of Louisiana on November 9, 1985 dismissed for lack of jurisdiction a suit brought by Senator Helms to enforce a legislative subpoena served upon the Soviet vessel.

- The U.S. Court of Appeals for Fifth Circuit on November 9, 1985,; affirmed the denial of habeas corpus for the reason stated by the District Court.

- The U.S. Supreme Court on November 9, 1985, denied a motion for immediate Supreme Court review of the matters before the 5th Circuit.

In conclusion, as you are aware, I appeared before the House Subcommittee on Europe and the Middle East, Committee on Foreign Affairs, on November 7, 1985, and provided testimony as to this incident and set forth our procedures for processing such asylum requests. It is clear that, with respect to the initial interview and ordered return of Medvid to the Soviet vessel, existing procedures for processing asylum cases were not utilized. It is likewise clear, however, that this incident should be and indeed has been utilized to precipitate a thorough review of relevant guidelines and the implementation of changes necessary to preclude such an occurrence in the future. I can assure you that all INS officers are on notice today of what is expected of them in this regard.

BEST COPY AVAILABLE

Senator SIMPSON. Thank you very much. I do appreciate all of you observing the time limit. I have questions now during my 5-minute stretch.

Mr. Brandemuehl, you were there both during the interviews of Mr. Medvid onboard the Coast Guard vessel and at the U.S. Naval facility at Algiers, LA. I am well aware that you are not a doctor, but I would be interested in your perception of his state. Did he appear to understand the questions asked of him, was he responsive to those questions, and was there anything extraordinary about his behavior as you noted it from your personal observations?

Mr. BRANDEMUEHL. Yes, he was responsive to the questions. He did not seem to hesitate. There was no problem with the interpretation, because he seemed to understand and he would reply within a short period of time to the questions.

I did notice that his mood would change somewhat. On one occasion he was very serious and then within a very short time period he turned and he was laughing. Toward the end of the interview, the second interview, it was noticeable that Medvid was becoming more belligerent toward the U.S. delegation.

When we were questioning him the second time about how he got into the water, he stated, "Why are you harping on this? I already told you I was leaning over the rail and fell overboard." And as we continued to question him, he stated, "There is no point in this. I am a Soviet citizen. I speak while looking you in the eye. I repeat once more, I have the desire to go home and see my mother and father."

Senator SIMPSON. To the best of your knowledge, was—and this is very important to many—was there any communication between the Border Patrol agents Spurlock and Bashaw and either the State Department or the INS Washington or regional office on the night that Mr. Medvid was first apprehended? Is there any formal or informal record of such a contact, or do you have any knowledge of such a contact?

Mr. BRANDEMUEHL. I definitely have no knowledge of such contact. I wish there had been. I think this whole thing would have taken a different turn, as the system we have in place should have generated that but it did not.

Senator SIMPSON. But you know of no conversation or do you know of any conversation about anyone saying, "Well, we have got one on our hands now, with the summit coming up," or "Soviet-American relations, this is heavy." Was there any reference to anything like that?

Mr. BRANDEMUEHL. I did not hear any conversation about that whatever, from anyone at the time.

Senator SIMPSON. What is your personal experience with alien crewmen who have jumped ship? You have obviously seen many of those and, as you say, some jump ship to go into port or to enjoy the grain and the grape or whatever, or just go in, and you deal with those. Some do not apparently ask for political asylum. In addition, do you believe our efforts to reinterview Mr. Medvid were sufficient?

Mr. BRANDEMUEHL. On the first part of your question, as far as what my experience has been with crewmen, I am a career officer.

BEST COPY AVAILABLE

I have a little over 29 years with this agency. During my career, I was stationed in Galveston, TX, for approximately 6 years with primarily a crewman control station, therefore we encountered just about every nationality in the world doing that type of work, so I am very familiar with the crewmen and with crewmen jumping ship.

They do jump for various reasons. Many times they have arguments with the captain, they do not like their contract, working conditions, the pay, and also many of them want to live here, they want to stay here. Many times you will find that they just jump ship and take off, they want to try to find jobs, and so forth.

The second part of your question as to whether I thought we did everything we could, under the circumstances I believe we gave it a good shot. I think that we tried everything that we could to get him to say those magic words that he wanted to stay.

Senator SIMPSON. Senator Simon, my 5 minutes have expired.

Senator SIMON. You first saw Medvid when precisely?

Mr. BRANDEMUEHL. I never saw him until the time that he came on the Coast Guard buoy tender.

Senator SIMON. Which was?

Mr. BRANDEMUEHL. On the 28th.

Senator SIMON. The 28th.

Mr. BRANDEMUEHL. Yes, sir.

Senator SIMON. And are you, on the basis of what you know, you are absolutely convinced beyond any doubt that is the same person that you saw and heard that jumped ship on the 24th?

Mr. BRANDEMUEHL. Yes, I am am very confident of that due to the eyewitness chain of identification.

Senator SIMON. You went down on the 28th. Who talked to you about going down and when?

Mr. BRANDEMUEHL. The decision to go down was on Saturday night of the Commissioner. We all had been working——

Senator SIMON. Would that have been the 27th then?

Mr. BRANDEMUEHL. Yes; I am sorry, on the 26th is when I first went to New Orleans, the evening of the 26th.

Senator SIMON. The 26th, is that the day you first saw him, or did you not see him until the 28th.

Mr. BRANDEMUEHL. No, I did not see him until the 28th, when our first interview was on the Coast Guard vessel. Our first interview was on the 28th, on a Monday.

Senator SIMON. OK. You went down there on the 26th?

Mr. BRANDEMUEHL. Yes.

Senator SIMON. And you did not see him until the 28th.

Mr. BRANDEMUEHL. No.

Senator SIMON. Can you describe the eyewitness accounts that make you absolutely certain this was the same person?

Mr. BRANDEMUEHL. Yes, go through the chain of——.

Senator SIMON. Yes.

Mr. BRANDEMUEHL. Well, first of all, at the first encounter by the Border Patrol on October 24, Mr. Medvid was photographed and interviewed by two of our Border Patrol agents. Of course, as we all know, he was subsequently returned to the Russian vessel at that time. And that was on the 25th, at about 1:30 a.m. when he was returned to the Soviet vessel.

BEST COPY AVAILABLE

Then on October 25, at about 3 p.m., our Deputy Chief Patrol Agent in New Orleans, accompanied by one of the officers who had interviewed him the night before and one other agent, making three agents, went on board the Soviet vessel and went to the captain and got his passport which has a photo affixed to it. All three went down to the sickbay where Mr. Medvid was confined, at which time the agent who had interviewed him the night before positively identified him as being the one that he had talked to the night before, so therefore we had three agents who could then verify that that was in fact Mr. Medvid.

Then the number of people who could positively identify Medvid was further expanded on October 26 when the State Department official and the Navy doctor went on board and went down, accompanied by one of our agents who had previously identified him. They went down to sickbay, at which time the State Department official who could speak Russian talked to Mr. Medvid and the Navy doctor examined him.

Senator SIMON. OK. If I could interrupt, you have two keys on that first time, the picture and the one INS agent, is that correct?

Mr. BRANDEMUEHL. Yes, and the passport.

Senator SIMON. Correct.

Mr. BRANDEMUEHL. Actually we had three items there.

Senator SIMON. Now, the passport. Did you have that passport, had it been retained? How would you identify Medvid with the passport?

Mr. BRANDEMUEHL. We secured it from the captain and it had a picture of——

Senator SIMON. You secured that on the 25th?

Mr. BRANDEMUEHL. Yes.

Senator SIMON. OK. But on the 24th you have the picture and that one INS agent is that INS agent a person who is reliable is he a person who, when he says he is certain it is the same person, you have confidence in that?

Mr. BRANDEMUEHL. Yes, that is correct.

Senator SIMON. Now, when you were told to go down on the 26th, what were your instructions?

Mr. BRANDEMUEHL. Like I mentioned before, I was to go down to, No. 1, assist the State Department in reinterviewing Mr. Medvid; and, No. 2, I was to conduct an initial or initiate an investigation of the first contact Mr. Medvid had with our agents; and, No. 3, was to initiate forming contingency plans to take Mr. Medvid off the Soviet vessel if negotiations between the State Department and the Russians broke down, if they would not consent to have him reinterviewed, because we were intent on reinterviewing him. We were going to do it one way or the other.

Senator SIMON. Did anyone say to you "We have got a problem on our hands, we do not want any international incident, we have to quiet this thing down"?

Mr. BRANDEMUEHL. No. I certainly knew we had a problem on our hands, but it was not put the way you did.

Senator SIMON. You felt no pressure whatsoever, you felt you could go down and protect that person's rights without having any pressure on you to the contrary whatsoever?

BEST COPY AVAILABLE

Mr. BRANDEMUEHL. Yes, sir, the Commissioner gave me complete free rein on this.

Senator SIMON. Thank you, Mr. Chairman.

Senator SIMPSON. Let me recognize a member of the subcommittee who has come to the hearing, Senator Grassley, a very attentive member of the subcommittee during my tenure as chairman. I appreciate his presence. Did you have anything or question you would like to ask? Then I will go to Senator Humphrey and Senator Metzenbaum.

Senator GRASSLEY. For the benefit of my colleagues who may be irritated at members coming in late, I was chairing the Subcommittee on Aging of which I am chairman, so I regret that I could not be here for the opening testimony.

Senator SIMPSON. We have taken a poll and we are not irritated.

Senator GRASSLEY. Thank you.

Commissioner Nelson and Mr. Brandemuehl, I think most of my questions are directed to the Commissioner. Jesse Tabor, of the New Orleans Border Patrol, has reportedly said that 115 seamen were returned to their ships in the lower Mississippi region during the year of 1985. Can you confirm or deny that figure?

Mr. NELSON. I cannot. Maybe Mr. Brandemuehl could, and clearly Mr. Tabor is the Chief Patrol Agent in New Orleans and in charge of that sector. They do have a lot of activity. Obviously, New Orleans is a major port, so it is certainly very feasible that that number is accurate, but I do not know.

Senator GRASSLEY. Can you, Mr. Brandemuehl?

Mr. BRANDEMUEHL. Mr. Grassley, I cannot confirm the exact number, but that is very close, whether it is 115, but it is very close.

Senator GRASSLEY. What percentage of the 115 of those returned would have been from Soviet bloc countries?

Mr. NELSON. A very small percentage, if any. I am not sure of the nationalities that were included in that, Senator. We could check on that.

Senator GRASSLEY. If you could check on that and submit it for the record, I would appreciate it.

Mr. NELSON. Certainly.

Senator GRASSLEY. Reports have also surfaced that over the past few years 200 Soviet bloc seamen have been returned to their vessels. Can you confirm or deny that figure?

Mr. NELSON. I cannot.

Mr. BRANDEMUEHL. I do not believe that is correct.

Senator GRASSLEY. You could say that it is not correct?

Mr. BRANDEMUEHL. Yes, right off the top of my head.

Senator GRASSLEY. There again, if you could reflect on it beyond this committee meeting and submit a more definite answer I would appreciate that very much.

Are you aware of any agreements between the United States and the Soviet Union that the Soviet and Eastern bloc seamen on grain ships will be returned to their ships by U.S. officials?

Mr. NELSON. I am not aware of any such agreement and I am confident that none exist as far as our agency is concerned.

Senator GRASSLEY. Did anyone in Washington, DC, know of the Medvid defection prior to his being returned to the ship *Marshal Konev*?

Mr. NELSON. I did not, and, again, I am satisfied from all the information we received that nobody in Washington did know about it until the early afternoon of the following day.

Mr. BRANDEMUEHL. That is correct. I am not aware of anyone who knew about it until after the fact.

Senator GRASSLEY. Mr. Chairman, I have no more questions.

Senator SIMPSON. Senator Humphrey.

Senator HUMPHREY. Thank you, Mr. Chairman.

Mr. Nelson and Mr. Brandemuehl, thank you for your presence and cooperation this morning. Mr. Brandemuehl, you used the term "nonthreatening environment." We have heard that a number of times over the intervening months. Let us see, tell us when you arrived in New Orleans.

Mr. BRANDEMUEHL. I arrived on Saturday evening, on the 26th of October.

Senator HUMPHREY. OK. Will you just describe briefly your activities over the next couple of days?

Mr. BRANDEMUEHL. Yes. I immediately—we arrived late that evening, it was quite late and we immediately went out to to the sector headquarters and we started to initiate an inquiry as to just what happened in this initial encounter.

Senator HUMPHREY. OK. Pardon me for interrupting, but just skip to the part where you first laid eyes on Mr. Medvid.

Mr. BRANDEMUEHL. I did not see Mr. Medvid until he came onboard the Coast Guard buoy tender.

Senator HUMPHREY. So you were at that first—you were aboard the buoy tender?

Mr. BRANDEMUEHL. Yes, sir.

Senator HUMPHREY. Who was in that party aboard the buoy tender, the American officials?

Mr. BRANDEMUEHL. We had the State Department representative, we had the U.S. Navy doctor, and myself, plus the interpreter for the American side, and on the Russian side——

Senator HUMPHREY. They will not testify, so we do not need to know who they are. OK. You had a State Department official. Did he fly down with you or did he fly from Washington to that site?

Mr. BRANDEMUEHL. No, he went down before I did.

Senator HUMPHREY. But he was down from Washington?

Mr. BRANDEMUEHL. Yes.

Senator HUMPHREY. So you and he were the only two there from Washington?

Mr. BRANDEMUEHL. That is correct.

Senator HUMPHREY. OK. And who spoke with, who directed questions to Medvid at that first meeting aboard the cutter?

Mr. BRANDEMUEHL. The State Department representative. He was in charge of the interview and he laid the ground rules and he was the one to speak for our side.

Senator HUMPHREY. Who was that?

Mr. BRANDEMUEHL. That was Mr. Louis Sell.

Senator HUMPHREY. Do you know what his position is?

Mr. BRANDEMUEHL. No, I do not.

BEST COPY AVAILABLE

Senator HUMPHREY. Can the staff or anyone tell us? Any volunteers?

[No response.]

While we are working on that—OK. So Mr. Sell decided the questions to be asked and he instructed the interpreter to ask those questions.

Mr. BRANDEMUEHL. That is correct.

Senator HUMPHREY. Who was in charge of this party of American officials? Who was the senior official in charge?

Mr. BRANDEMUEHL. Mr. Sell.

Senator HUMPHREY. Did he have any communications with any party off the cutter during that time you were aboard?

Mr. BRANDEMUEHL. Yes, during the interview, it was stopped once or twice when he conferred with I am not sure who, he did confer with other members of the State Department.

Senator HUMPHREY. In Washington?

Mr. BRANDEMUEHL. I think so, but I am not positive.

Senator HUMPHREY. OK. How long did that interview aboard the cutter last?

Mr. BRANDEMUEHL. We went onboard at approximately 4:30 p.m. and we did not leave there until about between 9:30 and 10 p.m.

Senator HUMPHREY. And during that whole time you were, the American officials were in the presence of Mr. Medvid?

Mr. BRANDEMUEHL. Yes.

Senator HUMPHREY. The whole time?

Mr. BRANDEMUEHL. I was completely. I was in his presence at all times. Mr. Sell would leave the room every once in a while and I was the only one that was there all the time.

Senator HUMPHREY. OK. What part of that entire time was devoted to questioning by Mr. Sell of Mr. Medvid through an interpreter? Can you estimate the length of time cumulatively?

Mr. BRANDEMUEHL. Oh, I would say at least a good 1½ hours probably.

Senator HUMPHREY. Was any of that recorded?

Mr. BRANDEMUEHL. Yes.

Senator HUMPHREY. It was recorded?

Mr. BRANDEMUEHL. Yes.

Senator HUMPHREY. All of it?

Mr. BRANDEMUEHL. Yes.

Senator HUMPHREY. Has a transcript of that recording been made public or have the tapes been made public?

Mr. BRANDEMUEHL. No, none.

Senator HUMPHREY. Do you know why not?

Mr. BRANDEMUEHL. No.

Senator HUMPHREY. That might make some informative listening. And then the process moved to a naval station ashore, is that correct?

Mr. BRANDEMUEHL. That is correct.

Senator HUMPHREY. And again Mr. Medvid was interviewed by U.S. officials?

Mr. BRANDEMUEHL. Yes.

Senator HUMPHREY. Were you in that party ashore?

Mr. BRANDEMUEHL. Yes.

Senator HUMPHREY. And who was—excuse me.

BEST COPY AVAILABLE

Mr. BRANDEMUEHL. I went ashore with the party to the naval station, at which time Mr. Medvid was again given a physical examination by the doctor and also a psychological examination or questioning period for a—I do not know how long that took. But then we secured a suite of rooms, it was actually the BOQ, and then Mr. Medvid was given a suite of rooms by himself and then he retired for the evening.

Senator SIMPSON. It has been 7 minutes, if I could——

Senator HUMPHREY. All right, let me just ask one quick question. Were there further recordings made at the naval station?

Mr. BRANDEMUEHL. No.

Senator HUMPHREY. There were not?

Mr. BRANDEMUEHL. No.

Senator HUMPHREY. Do you know why not?

Mr. BRANDEMUEHL. Basically, the recording equipment did not work.

Senator HUMPHREY. Of course, there was no other equipment available for hundreds of miles.

Senator SIMPSON. Senator Metzenbaum.

Senator METZENBAUM. Mr. Brandemuehl, when Mr. Woessner testified, he indicated that they had checked with various people as to whether this was the same person. Was there some doubt in your mind as to whether it was the same person?

Mr. BRANDEMUEHL. No, I had no doubt in my mind. As soon as I arrived in New Orleans, I talked to the Deputy Chief who was one of the first of the three that went on board there and I had no doubt in my mind that this was Mr. Medvid.

Senator METZENBAUM. During the period of your inquiry as one of the persons at Mr. Sell's inquiry, from the State Department, were there any fingerprints taken of Mr. Medvid?

Mr. BRANDEMUEHL. Initially, at the first encounter the Border Patrol——

Senator METZENBAUM. The first encounter?

Mr. BRANDEMUHL. The first encounter, yes, sir.

Senator METZENBAUM. And then after that there were none others taken?

Mr. BRANDEMUEHL. There were none others taken, no.

Senator METZENBAUM. Wouldn't they have provided total identification as to whether or not he was the same person?

Mr. BRANDEMUEHL. That is correct. We did not feel that we needed that. We had the eyewitness identification plus we were trying to get the confidence of Mr. Medvid and also to put him at ease and so forth, and it was decided that it was not advisable to fingerprint him as soon as we got him on the Coast Guard cutter.

Senator METZENBAUM. Did he speak any English?

Mr. BRANDEMUEHL. Very little.

Senator METZENBAUM. Did Mr. Bashaw and Mr. Spurlock, did they speak any Russian?

Mr. BRANDEMUEHL. No, they did not.

Senator METZENBAUM. How was it possible for them to make out this record of deportable alien, we are talking about he claims to be a citizen, a native of Russia, they advised him of his rights per CFR 287.3, he claimed to have signed on a vessel at a certain place about a month ago, the subject signed on as electrician, the subject

BEST COPY AVAILABLE

claims he jumped ship in the United States for political and moral reasons, the subject left his passport and gear on board the ship, he has no friends or relatives in the United States. How was all that done without being able to converse with him in his native tongue?

Mr. BRANDEMUEHL. That was done through an interpreter.

Senator METZENBAUM. There was an interpreter there at 11:30 at night?

Mr. BRANDEMUEHL. Yes, that is when they contacted the interpreter in New York and it was done telephonically.

Senator METZENBAUM. That is Irene Padoch?

Mr. BRANDEMUEHL. That is correct.

Senator METZENBAUM. Mr. Brandemuehl, there have been reports that the Russians threatened to shoot the U.S. representatives if they tried to board the ship—have you heard that statement made?

Mr. BRANDEMUEHL. No. At the time we went back on board there, we maintained a presence of U.S. officials on that vessel 24 hours a day and I was not aware that they had threatened to shoot us.

Senator METZENBAUM. You heard no reports? Did you hear any reports to that effect?

Mr. NELSON. No, sir, I did not.

Senator METZENBAUM. When the Americans boarded the ship, do you know whether there was an agreement that any interviews of Mr. Medvid would be conducted with Soviet officials present?

Mr. BRANDEMUEHL. When they first went back on board, there were none on board and the purpose of trying to take Mr. Medvid back off—of course, they met with resistance from the Russians. The captain said that he would have to call the Embassy and that they would not allow him to be taken off the vessel.

Like I said earlier, they took the passport and went down and made the identification and viewed Mr. Medvid. From then on, the Russians, after they started getting their messages I assume from their Embassy, they became very hostile and they were not going to allow us to have anybody interview him unless there was a Russian official present. That I think is what you are referring to.

Senator METZENBAUM. Yes. And you heard no threat of using firearms or anything of the kind?

Mr. BRANDEMUEHL. No, I did not.

Senator METZENBAUM. And nobody that you know of heard such a threat?

Mr. NELSON. We are not aware of that at all, Senator.

Senator METZENBAUM. Will you both check back with the other people on your team to see whether any of them know of such a threat?

Mr. NELSON. We certainly will.

Senator METZENBAUM. You say that Mr. Medvid repeatedly said he wanted to return to the ship, at each sitting he said he wanted to return home to his mother and father. Did you inquire of him as to why he had jumped ship in the first place—did he jump ship twice or did he jump once?

Mr. BRANDEMUEHL. He jumped ship once. We inquired into this. However, he never would admit to us that he deliberately jumped

BEST COPY AVAILABLE

overboard on the second reinterview. He continually said no, he fell overboard.

Senator METZENBAUM. Why did Mr. Bashaw and Mr. Spurlock indicate to you that they had returned him to his ship within a couple of hours after they had said he had jumped ship for political and moral reasons?

Mr. BRANDEMUEHL. We still cannot figure this out. They stated in their statement that they viewed him as a disaffected crewman, that he was not an asylum applicant, and they made the judgment call, a very poor judgment call, to return him at that time without even contacting their supervisor.

Senator METZENBAUM. They have no explanation for the fact that they wrote about political and moral reasons and then thought that he should be returned notwithstanding that?

Mr. BRANDEMUEHL. They have no plausible reason for this.

Mr. NELSON. I might add to that, Senator. I think again in the interviews I had with them on their appeal of the disciplinary procedure, they wrote the language you indicated and that certainly raised an issue as to a potential asylum claim and that is the basis of us saying that they didn't follow the instructions and they used poor judgment, so they obviously were aware of a potential asylum claim.

I think the second phase is when they had this lengthy telephone contact with Ms. Padoch, the interpreter, and she has testified before this committee that she has some difficulty with English and also with Russian. She speaks Ukrainian. Well, there was some confusion there as to what the understanding was and, I think, that was the basis, they basically indicate that after talking with her they concluded in the interpretation that he was not asking for asylum and, therefore, they went on to release him. That was their——

Senator METZENBAUM. He did not jump off or attempt to jump off the launch on the way back?

Mr. NELSON. Our understanding is yes, at that point again the record needs to be clear. INS, the Border Patrol agents turned him over to the shipping agents, that is normal procedure in ship-jumping cases. This was done at about midnight, as Mr. Brandemuehl indicated. They picked him up at the INS Border Patrol headquarters and they took him back to the shore and then to the launch out to the ship. We were not present at all of that. He apparently did try to get off the launch or did jump off that and there was a second episode of him jumping off that.

Senator METZENBAUM. Thank you, Mr. Chairman.

Senator SIMPSON. Senator Boren and I have to greet the Senate Youth Group in this building, and that will just take 5 minutes. I would recess the hearing for 5 minutes and then we will come back to the testimony of the two doctors, and I assure you that I am rearranging my schedule so that we may hear, indeed, Mr. Szmagala and——

Senator HUMPHREY. Mr. Chairman?

Senator SIMPSON. Yes?

Senator HUMPHREY. Would it be possible to ask a few more questions of Mr. Brandemuehl either now or after we return?

BEST COPY AVAILABLE

Senator SIMPSON. Well, if you wish, you could take another—how many more minutes——

Senator HUMPHREY. Two or three minutes, I think.

Senator SIMPSON. Go ahead, I will stick around for a couple of minutes.

Senator HUMPHREY. Thank you.

Getting back to the interview at the naval station, Mr. Brandemuehl, what was the situation with the recorder? Apparently there was an attempt to record that interview?

Mr. BRANDEMUEHL. Yes, that is correct.

Senator HUMPHREY. And what happened?

Mr. BRANDEMUEHL. Mr. Chairman, I wonder if I could—it was being conducted by a body wire——

Senator HUMPHREY. A what?

Mr. BRANDEMUEHL. A body wire concealed.

Senator HUMPHREY. I see. Was that true of the first interview?

Mr. BRANDEMUEHL. Yes.

Senator HUMPHREY. The first interview aboard the launch.

Mr. BRANDEMUEHL. Yes.

Senator HUMPHREY. So both of these were discrete recording attempts?

Mr. BRANDEMUEHL. That is correct.

Senator HUMPHREY. OK. So what happened in the second case?

Mr. BRANDEMUEHL. The machine evidently was inadvertently turned off when moving around the room or sitting on the coach and so forth.

Senator HUMPHREY. There was nothing at all on that tape?

Mr. BRANDEMUEHL. I think there was just a few words at the beginning, I am not sure how much but very little.

Senator HUMPHREY. So there was some oral conversation on that tape, the second tape?

Mr. BRANDEMUEHL. Very limited.

Senator HUMPHREY. And that has not been made public either?

Mr. BRANDEMUEHL. No.

Senator HUMPHREY. Thank you, Mr. Chairman.

Senator SIMPSON. Let me ask another question.

I would ask you this: When you were present on board the Coast Guard buoy tender and at the U.S. naval facility ashore, did State Department officials make any comments to you in any form or manner that would have led you to believe that the up-coming U.S.-Soviet summit was having an effect on our actions in the Medvid case?

Mr. BRANDEMUEHL. None whatsoever. There was nothing that I recall even mentioned about that while we were on that—at anytime while I was down there.

Senator SIMPSON. Did it surprise you when you first saw that enter the discussion or the review of the Medvid case?

Mr. BRANDEMUEHL. It surprised me a little bit, but it did not phase me too much on it.

Mr. NELSON. Mr. Chairman, I might add to that. I was present here in Washington in the State Department control room during this entire time, with representatives of State and Justice and others, and again I can state just as a matter of personal knowl-

BEST COPY AVAILABLE

edge that issue was never at any point raised in any of those discussions in Washington.

Senator SIMPSON. At anytime?

Mr. NELSON. At anytime.

Senator SIMPSON. Does anyone have any further questions?

[No response.]

Senator SIMPSON. Very well, I am going to recess until 12:45 and then we will pickup with the doctors and go forward until we conclude.

[Short recess.]

Senator SIMPSON. The hearing will resume.

Now we will go forward with the medical personnel. We have Lt. Comdr. J.M. Caruthers, M.D., U.S. Navy, of the Navy Medical Clinic of New Orleans, and Maj. William M. Hunt III, M.D., U.S. Air Force, of Keesler Air Force Base, in Mississippi, and if you would come forward we would appreciate it very much, having your testimony under the summarization.

Thank you so much, we appreciate your patience.

Mr. HUNT. Excuse me, do we want to accomplish the swearing in?

Senator SIMPSON. We will do that, yes. You are very alert there. If you will please stand and raise your right hand.

[The witnesses were sworn.]

Senator SIMPSON. I certainly do not mean to make light of the swearing in process. It adds a dimension to a hearing which is not always present, and it is, I think, very important that we realize the gravity of that oath. So if you will please proceed in the order on the schedule, Lieutenant Commander Caruthers and then Major Hunt.

TESTIMONY OF LT. COMDR. J.M. CARUTHERS, U.S. NAVY, NAVAL MEDICAL CLINIC, NEW ORLEANS, LA; AND MAJ. WILLIAM M. HUNT III, U.S. AIR FORCE MEDICAL CENTER, KEESLER AIR FORCE BASE, MS

Dr. CARUTHERS. Members of the committee, I do not have any prepared statement. I am here because I understand that you have some questions about my report and my impression during the event that occurred with Mr. Medvid, so any questions you have, feel free.

Senator SIMPSON. All right. Major Hunt.

Dr. HUNT. Mr. Chairman and members of the committee, my name is Maj. William M. Hunt III, U.S. Air Force Medical Corps, and I am assigned to the U.S. Air Force Medical Center, Keesler Air Force Base, MS, as the Chief of the Inpatient Psychiatry Service. I am board certified by the American Board of Psychiatry and Neurology and I appreciate the opportunity to appear before this committee and discuss my findings in the Medvid case.

I am also submitting my curriculum vitae to establish for the members my professional credentials.

On Sunday, October 27, 1985, in my role as psychiatrist on call at the medical center, I received a phone call from personnel at the Medical Clinic Naval Air Station at Belle Chase, LA, stating that

BEST COPY AVAILABLE

the U.S. State Department was requesting the presence of a military psychiatrist concerning Miroslav Medvid.

It was reported to me by clinic personnel that on the evening of October 24, 1985, seaman Medvid had attempted to defect to the United States. Through a series of events, he was later returned to his Soviet ship. The State Department learned of this only after he had been returned to his ship. They then sent a team to Louisiana to attempt to unravel the situation and to insure that Medvid's basic rights were protected concerning his desire to defect.

The entire situation involved many convoluted circumstances, which, on the surface and without adequate information and clarification, have led to significant misunderstandings at various levels.

I appear before this subcommittee in the hope that I can be of some assistance in providing some realistic clarification.

I provided on the scene consultation from approximately 3 p.m., Monday, October 28, until 5 p.m., Tuesday, October 29. This included a minimum of 6 to 8 hours of direct, eyes-on observation of Medvid as well as two psychiatric interviews.

In my role as psychiatric consultant, I was tasked with assessing his mental competence to make a decision in regards to his defection. Using sound clinical psychiatric methods, I was able to clearly determine that he was mentally competent to make such a decision. Again, using sound clinical methods, coupled with significant clinical observations, I was able to categorically determine that any previously administered medications did not adversely affect his mental competence. A copy of my previously released report is provided for the record.

I should note that my report was prepared differently than my usual clinical report since I anticipated that it would be read by many people not specifically trained in medicine and psychiatry. As I was consulting for a nonmedical agency; namely, the State Department, this represented sound application of good basic principles of consultation.

During my involvement in this matter, it is my opinion that the individuals representing the State Department worked diligently at the tasks at hand, and did ensure that seaman Medvid had the right to exercise his will in regards to defection. As of Tuesday afternoon, October 29, 1985, to have refused to honor his repeatedly stated desire to return to his ship would have in itself likely conflicted with his basic human rights and would have, in my opinion, risked unfavorable international sentiment about the actions taken.

I will be happy to answer any questions.

Senator SIMPSON. Thank you very much. Let me just kind of throw one to both of you perhaps. First, Dr. Caruthers, could you describe the physical appearance and demeanor of Mr. Medvid? And I ask you, did he appear to understand the questions asked of him and was he responsive to those questions?

Dr. CARUTHERS. Yes, I had several opportunities to observe and also examine Mr. Medvid. The first time was on the afternoon of October 26, that was a Saturday. That was the first encounter with Mr. Medvid, after the Americans were out of his presence for any significant amount of time, and he was in bed and he was perfectly

BEST COPY AVAILABLE

awake and alert. He could understand all of the conversations that the State Department representative, questions that he posed to him, and what the exam was all about. There seemed to be no problem.

The initial exam was to determine three questions, whether he was alive. There was some question of whether he was even present on the ship at all, whether he was the same person that we had a photograph of, and, third, whether there was any immediate life-threatening medical situation that needed intervention before further proceedings.

Senator SIMPSON. We need not admit for these hearings as to your professional competence, both of you, but certainly you are highly trained professionals. To both of you, can you say with a reasonable medical certainty that Medvid was medically, mentally and physically capable of making a rational decision on the basis of the seeking of political asylum?

Dr. CARUTHERS. Yes, as far as the medical question there was evidence of minor injury to his arm, which is in my report, but there was nothing that was of major significance where he would not be able to participate in the interviews. Mentally, there was no clinical observation that he was under the influence of drugs at all and that he would be incapable of understanding and participating in the interviews.

Senator SIMPSON. Let me ask Major Hunt, a letter has come to me from two Ukrainian-American doctors claiming that your report, and it is quoted, "Poses serious questions regarding the validity of its conclusions." The letter goes on to claim that the patient-physician confidentiality was violated, language and cultural barriers were not taken into account, and that no blood nor urine tests were administered and thus your psychiatric conclusions are questionable. How do you respond to those criticisms?

Dr. HUNT. In regards to the first issue concerning patient-physician confidentiality, let me first say that my involvement did not constitute the doctor-patient relationship in the usual sense, that I was functioning as a consultant to the State Department, which is a different role.

However, Medvid did give permission for me to interview him, but he did insist on the presence of a Soviet doctor whom he did at one point specifically identify as his doctor. So it was keeping with standard clinical and psychiatric practices to allow the presence of his doctor.

One example similar to this that I encounter more commonly in my practice is, say, a paranoid patient who is more comfortable being interviewed in the presence of one whom he does trust, and in that type of situation it is standard practice to allow for that person to be present in the interview.

In regards to the second concern that was raised, language and cultural barriers being taken into account, my training and personal life experiences, beginning in childhood and extending through all 4 years of medical school, 4 years of residency training and clinical experiences, have helped to form an attitude when I am acutely aware of the importance of both linguistic and cultural issues in my work, and in my training I have worked with supervisors originally from countries such as Cuba, Mexico, India, Thailand, Japan,

BEST COPY AVAILABLE

South Africa, Argentina, and, yes, even the Soviet Union, of various political orientations, religious and religious backgrounds, and I have had didactic training in issues of cross-cultural psychiatry and previous clinical experience dealing with individuals of various national linguistic cultural and religious backgrounds, and have even had previous experience conducting psychiatric interviews and assessments via an interpreter and individuals who had no control whatsoever of the English language.

The State Department's interpreter was originally from the Ukraine, skilled in Ukrainian, Russian, English, and the general field of linguistics. Additionally, as a result of his background, he served well also as a consultant to me on cultural issues, and in addition to that one of the State Department personnel present had himself spent at least 3 years in the Soviet Union.

Also in the Air Force I have received instruction in Soviet attitudes toward the United States and Americans. In addition to my direct observations in the interviews, the interpreter and I frequently consulted further to review observational data.

Senator SIMPSON. Let me just say that I am going to expand the question period to 10 minutes each for each member of the panel that are here. I have another thing I must go to at 1:30, so I will continue questions for the period of 10 minutes and go to Senator Simon for 10 minutes and then Senator Humphrey for 10 and Senator Metzenbaum, as we have been doing, and I just wanted to express that at this time.

Senator METZENBAUM. How late does the Chair expect to go, if we could find out?

Senator SIMPSON. I have to speak to a Georgetown immigration group here in the Mansfield Room that should not take but 20 or 30 minutes, and then go until we complete our work. I do not want to have anyone have to come back.

Senator SIMON. At 2 o'clock there is another meeting, a full Judiciary Committee meeting scheduled in this room.

Senator METZENBAUM. There is also a Budget Committee meeting at 2:00. I am wondering, Mr Chairman, I know you are being very gracious as far as this Senator is concerned, I am not a member of your committee, but I would believe that 5 minutes might be totally adequate for each of us unless the Senator from New Hampshire has some extended questions of a medical nature.

Senator SIMPSON. Well, if you could——

Senator METZENBAUM. I would like to hear Taras Szmagala, who is from Cleveland, I would be very anxious to hear him, if I can.

Senator SIMPSON. Maybe I can delay my remarks and we will go forward here. If you could bring that answer to a swift conclusion, then I will go to Senator Simon and we will stick to the 5-minute ratio and see if we cannot get it done.

Dr. HUNT. In addition to the direct observational data, interviews, 6 to 8 hours of direct observation, the interpreter and I had extensive consultation to better gear the observational data and interview in consideration of cultural and language issues.

As a matter of fact, some of my sensitivity in these areas was involved in my assessment of his confidence to make a rational decision in regards to defection. Family is recognized as a generally powerful influence for individuals of all cultures, and when he

BEST COPY AVAILABLE

stated his desire to return to the Soviet Union and related this to numerous statements about once again seeing his family, this is seen by me as basically rational and understandable and difficult to dismiss or discount, particularly when you consider the broader context of the fact that it seems unrealistic to assume that the United States can insure his family status or safety if he had chosen to defect.

Senator SIMPSON. Yes.

Dr. HUNT. The third aspect of the question as regards to why no blood and urine tests were performed, is that——

Senator SIMPSON. That is the third part of it, if you could you respond to that as briefly as possible. I know that Senators are interested particularly in that, if you could just summarize it, I know they have specific questions, especially Senator Humphrey.

Dr. HUNT. Yes, to summarize real briefly, it would have been a moot point and irrelevant to my basic conclusions regarding his competency. For example, I do not know what his blood type was either, but that was irrelevant to what I was being asked, and I have numerous other references and ways of further clarifying that issue, if the subcommittee members would like.

Senator SIMPSON. All right, Senator Simon.

Senator SIMON. If I may follow through on the Chair's last question to either one of you. Through your analysis, are you not able to determine the level of sedation and what kind of sedation a person may be under? Wouldn't that be a very important question?

Dr. CARUTHERS. No, the urinalysis that is to detect drug levels usually gives you a positive or negative, either a substance is present or is not. It tells nothing about the effect that it is having.

For example, let us say someone had smoked marijuana a week ago. If you took a urinalysis a week later—the person is now perfectly coherent, it would be positive but it does not mean anything as far as his level of intoxication.

Senator SIMON. Did you consider it at all?

Dr. HUNT. Yes, we considered it from many different angles and Dr. Caruthers and I consulted prior to his second physical examination for us to come up with very specific clinical signs to look for on examination if it would have related to drug induced or any other metabolic or organic toxicity or effects.

Senator SIMON. And you just decided on your own not to do it?

Dr. CARUTHERS. Well, there was no clinical indication, in other words there was nothing to suspect that he was under the influence of a drug. The question of whether he had had a drug was settled from the Soviet physician, he said yes, he had given him something to sedate him and also a narcotic at one time for pain relief.

Senator SIMON. You say there was nothing to suspect that he was under the influence of drugs, Dr. Hunt. Your statement here says, "The Soviet doctor stated that the medications given were Aminozin"—I may be mispronouncing it—Sesetazine. Did the administration of these drugs, raise questions when the Soviet doctor mentioned that?

Dr. HUNT. It raised questions but it also helped put into perspective some of the background information we had, for example, the observed sedation for a brief period of time when we came on the

BEST COPY AVAILABLE

Soviet freighter. Those medications at some point were likely used and, yes, did have effects for a period of time on his behavior and mental status, but we already knew that information and I can summarize it real briefly by quoting a world renowned expert on basic and clinical psychopharmacology, Dr. Leo Hollister, in an article he wrote for the psychiatric clinics of North America in 1984. He states——

Senator SIMON. I do not mean to cut you off, but I am trying to squeeze my questions into 5 minutes here——

Dr. HUNT. He says——

Senator SIMON. If I might just continue.

Dr. HUNT. Yes.

Senator SIMON. Dr. Hunt, one portion of your statement I found a little bit amazing. You say that to refuse to honor his desire might have caused international problems.

Dr. HUNT. Yes, sir.

Senator SIMON. Now, as in the case of the drug administration or the urinalysis of drugs, did the international implications of this thing have anything to do with your decision as to how you would treat Mr. Medvid, No. 1? And No. 2, on what basis did you draw these international implications? Did you just do this in a vacuum by yourself, or did you get directions from someone that made you think that there would be international implications on this?

Dr. HUNT. This reference in my statement was derived by me in preparing the statement. What I was referring to specifically has to do with a longstanding discussion that is actively going on within the world psychiatric community and within the American psychiatric community in regards to the abuses of psychiatry within the Soviet Union. To have carried this situation further—this is my opinion—would have risked the Soviet Union having been able to make significant propaganda to the rest of the world psychiatric community.

Senator SIMON. OK. Did you draw that conclusion just by yourself on the basis of what you have read, or did someone tell you that might be the risk?

Dr. HUNT. This is my conclusion solely. I was not prompted by the State Department, and no such suggestions were given.

Senator SIMON. And when you decided not to have the urinalysis, was the international implications of that discussed by the two of you at all?

Dr. HUNT. No, sir. It basically was just not indicated, just like we did not get a cardiogram or a cat scan or we did not do a spinal tap to check his spinal fluid. Those were issues that were based on very thorough, 6 to 8 hours of observation. It was unnecessary to determine the issues at hand.

Senator SIMON. Dr. Caruthers, was there any discussion of what the implications might be if you asked for a urinalysis in the way of international problems?

Dr. CARUTHERS. No; neither the State Department nor anyone else, ever questioned our opinions or tried to influence us according to ramifications or political skill. We were asked simply what we found and our assumptions and we went on from there.

BEST COPY AVAILABLE

As far as a urinalysis, like Dr. Hunt said, there was no clinical indication to do it. We already knew that he had been given drugs; that is, sedated in the recent past.

Senator SIMON. Right. My 5 minutes is up. Let me, if I may ask one question for the record that I would like to be answered by Dr. Hunt: You say, "It is my conclusion that the individual's motivation for jumping from his ship and initially seeking political asylum was based primarily on a rather impulsive decision, grabbing for the glitter and gusto, rather than any deep-rooted political or moral beliefs." I would be interested for the record in writing having the reasons for your conclusion, for that conclusion.

[The information requested follows:]

BEST COPY AVAILABLE

QUESTIONS FOR LCDR CARUTHERS - MEDVID HEARING FEBRUARY 9, 1986

Question: In both of your examinations, you noted that Medvid had a minor injury to his left arm, which was bandaged from the base of the fingers to the proximal third of the upper arm. Did you at any point in your examinations remove the bandages to examine the entire covered area? What did you find?

Answer: On my examination of 28 October 1985, Mr. Medvid's arm was unbandaged and the following findings were noted in my report: "Several ecchymotic areas on right arm in various stages of resolution (not noted on exam 26 October 1985). Approximately 5 centimeter linear laceration anterior left wrist with three silk (?) sutures in place without erythema, drainage, or lymphangitic streaking. Patient able to flex left fingers and had good capillary refill in nail beds. Extremities otherwise normal."

Question: Do you have any comments about the statements made by Dr. O'Malley regarding your examination of Mr. Medvid and your conclusions?

Answer: Concerning Dr. O'Malley's opinions based on his review of written reports, I have no comment. However, at numerous points his facts are in error and clearly contradicted by the original reports. The most blatant errors are the following:

(a) Dr. O'Malley states that the medical reports indicate that Mr. Medvid appeared "sedated". Review of the documents specifically reveals that Mr. Medvid was never found to be sedated.

(b) It is stated that eye movements were not evaluated. Review of the report on the 28 October 1985 examination under the entry for "Eyes" states that "extra ocular movements intact" (said another way, the eye movements were normal).

(c) Dr. O'Malley states that the bandages on Mr. Medvid's arm were never removed and the injury directly inspected. The report of the medical examination on 28 October 1985 clearly makes this assertion false.

In other areas Dr. O'Malley makes misleading conclusions/inferences from findings mentioned in the reports of the physical exams. One of these concerning the medical significance of ecchymoses has been discussed.

To address his conclusions that the neurological exam was inadequate, that urine or blood tests should have been performed, and that Mr. Medvid was under the influence of drugs, I offer the following:

First, some backgroud information will be necessary. "Under the influence" is assumed to refer to psychological influence and more specifically pharmacologically induced docility and increased susceptability to suggestion. To my knowledge, only four pharmacologic classes can cause this (numerous individual drugs are in each class, but all agents of a given class produce approximately the same effect). Two classes, the barbituates and sedative/hypnotics, produce obvious drowsiness, relaxation, slurred speech and ataxia (unstable gait) if given in sufficient quanitities to have a significant psychological influence (as defined above).

BEST COPY AVAILABLE

Question: What are the ecchymotic areas on the Seaman's right arm, which you describe in your second medical report? Is Dr. O'Malley accurate when he says that an ecchymotic areas means severe subcutaneous bruising? In you opinion, how severe was the bruising?

Answer: "Ecchymoses" and "ecchymotic areas" are simply the medical terms for what laymen call "bruises." In fact, there are three medical terms for "bruises" depending on the size. The smallest (less than one to two millimeters in diameter) are called petechiae. Next are the purpuras (up to about a nickle or quarter-size) and finally the ecchymosis which is anything larger.

Dr. O'Malley is incorrect in his conclusion that these are indicative a priori of "severe trauma." There is no direct correlation between the size of a bruise and the degree of trauma (in fact in some medical illnesses, there is ecchymosis without trauma). The significance of the cause of the bruises is determined by associated symptoms. The symptoms of significant trauma in an extremity would include angular deformity, swelling and dysfunction, none of which Mr. Medvid demonstrated.

As reported in my 28 October 1985 examination of Mr. Medvid, I could only conclude that the injury was minor and consistent with the acknowledged history of a struggle requiring physical restraint.

Question: What could have caused the lacerations to the fingertips on the left hand, which you described in your first medical report? You make no mention of them in your report on the second medical exam, why? Did you ever ask the Seaman or his doctor for their explanation of the lacerations' origin?

Answer: Mr. Medvid repeatedly said he did not remember how he got the injuries and the Captain of the MARSHALL KONIEV said that the injuries were due to Mr. Medvid's grabbing a lightbulb (which shattered) during his earlier struggles when he was first returned to the ship.

The fingertip injuries mentioned in the first report were "superficial, clean lacerations." To be more specific, they were not much more significant than paper cuts, and could reasonably be expected to heal without a scar within two to three days. The injuries were not noted on re-evaluation.

Question: There have been some newspaper reports that when Medvid leaped from the launch and swam to shore to escape being returned to the MARSHALL KONIEV, he beat his head against a rock. Would that have not caused some injury to his head? In your examinations did you find any medical evidence to suggest that the seaman might have abused himself, particularly his head?

Answer: Concerning evidence of head trauma, my holographic report (written while onboard the MARSHALL KONIEV) states that there was no evidence of obvious trauma. Your assumption is correct that anyone who had beat his head against a rock with any significant force would have sustained obvious trauma (which Mr. Medvid did not demonstrate).

The only other possible self-induced trauma was the laceration to his left wrist. As noted in the report of the 28 October 1985 physical exam, this appeared to be a minor injury (i.e. not involving deeper structures such as nerves, blood vessels or tendons). Mr. Medvid repeatedly asserted that he did not recall how the injury was incurred, whereas the Soviet ship's captain and doctor said that the injury was self-inflicted.

BEST COPY AVAILABLE

Question: In your second report you note that the ecchymotic areas were not "noted on exam 26 October 1985." Were you given any explanation for the bruises? From what you saw, were you able to draw any conclusions about what might have caused the bruising or when it occurred? Could the bruises have been the result of something that occurred between the time of your first and second examination?

Answer: The bruises were in such a location (primarily the upper arm) and distribution (approximately the area of grip of an adult male) as to be consistent with the history of a struggle. Also, the ecchymoses were faint suggesting minor trauma and very likely would not have been adequately developed for observation when first examined (approximately 36 hours after injury) but developed and began to resolve by the second exam, 48 hours later. It is unlikely that significant blunt trauma could have been inflicted between the examination on 26 October 1985 and that on 28 October 1985 with such a benign appearance.

Question: If the minor wrist laceration was the only injury to the left arm, why would it have been bandaged to such an extent?

Answer: This I cannot answer. Suffice it to say that when the arm was unbandaged, only the injury described was found.

MR. MEDVID'S EXAMINATION TO DETERMINE DRUG INFLUENCE

Phenothiazines (neuroleptics), another group of psychoactive drugs which may have subtle effects producing normal behavior in a previously psychotic individual, were administered to Mr. Medvid by the Soviet physician. However, when given to a normal person in quantities adequate to influence behavior (especially influence against one's will), the dose must border on or exceed the toxic level and produce obvious signs. These would include one or more of the following: tachycardia (heart rate greater than 100), muscle rigidity, tardive dyskinesias (tongue protrusions, muscle spasms in the wrist, neck, ankles, jaw and other less frequent symptoms), miosis (small pupils), decreased reflexes, decreased consciousness, or hypotension.

The final group is the tricyclic antidepressants. Once again, these drugs can have subtle effects normalizing abnormal behavior but when administered to a normal person to influence behavior, obvious clinical effects occur. These include nausea and vomiting, drowsiness, ataxia, nystagmus (abnormal eye movements), mydriasis (dilated pupils), and involuntary limb movement. Hypothermia and extreme hyperthermia (usually defined as above 106°F) have been rarely noted.

My examinations on 26 October 1985 and 28 October 1985 did not reveal any clinical evidence (e.g. ataxia, slurred speech, abnormal pupils, involuntary limb movement, decreased consciousness) of existing drug effects. Thus no laboratory studies were deemed necessary or useful to determine drug influence.

BEST COPY AVAILABLE

Senator SIMPSON. Thank you, Paul. I appreciate that. The record will accept your full explanation about the quotation you were citing there, if you will present that fully we will have that put in the record.

[Major Hunt's response on page 158.]

Senator SIMPSON. Senator Humphrey.

Senator HUMPHREY. Dr. Caruthers, as you probably know, an independent medical authority testified before somebody or other around here on this case—I think his name was Dr. O'Malley—and it is his opinion that the drugs Haldol and Thorazine are potent drugs. Is that your understanding as well?

Dr. CARUTHERS. Yes; they are in the category of major tranquilizers. They are used to sedate people who, for one reason or another, might be out of control. For example, you might use it if someone were on PCP and you could not control them any other way. However, when you use it to sedate them, there is an obvious change in their behavior. It is not something where you would look at them and say that the person is acting normally, even though he is on Haldol or sedation.

Senator HUMPHREY. And Dr. O'Malley says further that these drugs remain present in the body for weeks. Now, I suppose they are slowly eliminated. Have you ever administered either of these drugs?

Dr. CARUTHERS. I have never administered any; no.

Senator HUMPHREY. Or provide them?

Dr. CARUTHERS. I have given Haldol orally in geriatric cases for behavior problems, in very small doses.

Senator HUMPHREY. While you were examining Mr. Medvid, did you have available to you any reference material that you could consult to determine what the medical terminology, but what the average rate of elimination of these drugs are?

Dr. CARUTHERS. No; I did not have that at the time. The general impression is that the metabolytes remain in the system for a while, but as far as the clinical effect, how it affects the behavior, that is something that you can tell from examination only.

Senator HUMPHREY. Dr. O'Malley testifies that the "personality of the patient appears unimpaired or normal, but the actual situation is that the emotional and thought processes are profoundly altered." Do you agree that that is the effect of these drugs?

Dr. CARUTHERS. I would defer to Dr. Hunt to answer in more detail, however, I think that is somewhat misleading. Yes, if someone is schizophrenic and you give him these drugs to bring him down to a normal level. What you encounter with this person is that he is reasonably normal, rather than completely abnormal. But if you give it to a normal person in doses to affect their behavior, the impression would be that this person is not acting quite straight, that he is subdued or depressed or tranquil, or other terms like that that you might use. In my encounters with him, never was that the case, neither Saturday nor Monday.

Senator HUMPHREY. Are there any medical exams that can determine the level of the presence of these drugs?

Dr. CARUTHERS. If they have fairly high doses; yes. In other words, you can check for changes in the pupil, you can check for change in the extra-ocular movements, the movements of the eyes.

Senator HUMPHREY. I mean tests done on body samples.

Dr. CARUTHERS. Body samples, not that I am aware of as far as levels, but I am not sure about that.

Senator HUMPHREY. OK. Well, who was in charge, which of you was in charge of this?

Dr. CARUTHERS. Neither was in charge. Each of us had our own field. Mine was more the medical aspects and Dr. Hunt's was the psychiatric.

Senator HUMPHREY. Then you conducted all the physical examinations?

Dr. CARUTHERS. Yes.

Senator HUMPHREY. Then whose conclusion was it that, according to the State Department document, "Medvid appeared to be in generally good condition"? Is that your terminology?

Dr. CARUTHERS. Let us see which report—there were two reports, one was a typed report and the other was a handwritten report. The handwritten report was prepared on the ship itself on Saturday.

Senator HUMPHREY. In any event, do you concur with the State Department's opinion that "Medvid appeared to be in generally good condition"?

Dr. CARUTHERS. In impression; yes. In looking at my reports, I do not see that phrase down here as clinically generally good condition.

Senator HUMPHREY. I am not necessarily suggesting that those are your words. In fact, those were State Department words

Dr. CARUTHERS. Oh.

Senator HUMPHREY. I thought perhaps they had borrowed them from you. Those are State Department words, and do you agree with that, that he was in generally good condition?

Dr. CARUTHERS. Yes; he appeared well.

Senator HUMPHREY. Did you note any head wounds?

Dr. CARUTHERS. He had no head injuries. The only injury that I could see on him in the initial examination on that Saturday, October 26, was that he had a bandage on his left wrist that extended up to his forearm, and he had very small nicks on his hand. At that time I did not examine the wound because all the State Department wanted me to verify at that time was that he was alive and that he was relatively well.

On the second examination on Monday night, October 28, the wound itself was looked at and that was about a 4- or 5-centimeter laceration across the front of his wrist.

Senator HUMPHREY. Did you ask Mr. Medvid how he sustained that wound?

Dr. CARUTHERS. He was asked several times and he always said that he did not remember. The ship's captain said that before they subdued him a couple of nights before, that he got a lightbulb and broke it and injured himself that way, but Mr. Medvid always said he did not remember anything.

Senator HUMPHREY. What professional opinion did you have about that wound?

Dr. CARUTHERS. As far as the wound itself, it could fit any scenario: That it was a laceration from a piece of glass as we were told, that it was lacerated while being subdued somehow, some-

BEST COPY AVAILABLE

thing sharp cut him. It did not appear to be very suspicious as far as being a malicious injury by someone else. In other words, there were no hack marks. It was not a deep wound as far as I could tell, because his capillary refill; that is, the pinking of the fingers was intact and he could flex his fingers so he did not have any damage of any deep structures, and it was simply closed with just three sutures.

Senator SIMPSON. Senator Humphrey, I have gone 7 minutes there. I understand that this room will be vacated at 1:45 by the chairman of the Judiciary Committee, and I do understand that kind of activity by the chairman, and so—Senator Metzenbaum.

Senator METZENBAUM. Dr. Hunt, I want to come back briefly to the matter raised by Senator Simon. You are reporting to us that you were doing a psychiatric examination.

Dr. HUNT. Yes, sir.

Senator METZENBAUM. And I have difficulty—I have a lot of respect for your medical qualifications, you are a diplomat from the American Board of Psychiatry, and you have a number of other qualifications. I am frank to tell you that it bothers me that, in reporting to the Senate committee, you use as part of the psychiatric determination your view that as of Tuesday afternoon, October 29, 1985, to have refused to honor his repeated stated desire to return to his ship would have in itself rightly conflicted with his basic human rights. I am not sure that determination is part of a psychiatric evaluation. I am certain that the further conclusion—that it would have risked unfavorable international sentiment—is not a part of such an evaluation and I am candid in telling you that I am concerned about this. Was there something in this psychiatric examination that somehow caused him to make an examination that was not totally based upon psychiatric considerations but rather upon (*a*) his evaluation of human rights and vis-a-vis this man, and (*b*) your own interpretation as to what the Soviet psychiatrist might conclude or somebody else might conclude in the total universe relative to risking unfavorable international sentiment about the action taken?

And I say to myself, those are not psychiatric considerations, and I am sort of curious to know when and how you concluded to get into these arenas.

Dr. HUNT. There were a lot of factors involved in that that do involve very clearly psychiatric issues. One has to do with the issue of competence. The other has to do with his motivations, his free will. Another has to do with the observation——

Senator METZENBAUM. Why do you not just elaborate upon how it has to do with his competence or his ability to express his free will and relate that to unfavorable international sentiment about the action taken or about the question of violating his basic human rights?

Dr. HUNT. One of the factors, sir, that any physician, including a psychiatrist, must deal with is the severity of a clinical presentation, in other words, as the person presents what do you make of that and what are you likely to expect to occur in regards to any clinical condition that you do possibly see present.

As I mentioned in my original report, I had some concerns as regards to hypomanic features that were noted consistently through-

BEST COPY AVAILABLE

out the period of my involvement, and as I stated in my original report, I was unable to completely exclude the possibility that this man was developing a bipolar disorder otherwise known as a manic episode where, if that were the case and it was unable to be determined on any grounds, urinalysis would not have helped with that question either——

Senator METZENBAUM. I am not talking about urinalysis. I am trying to get you to relate the psychiatric evaluation to the two statements you made here, and I am concerned that these two thoughts in your mind may have affected your judgment in making the psychiatric evaluation, and you have been talking about some other things in your response and you have not been talking about my question.

Dr. HUNT. I would like to get to that, if I may, please.

Senator METZENBAUM. The chairman is going to tell me my 5 minutes has expired.

Dr. HUNT. I was——

Senator SIMPSON. Maybe we can come back and revisit this. We may have to do that, if we can. We will see, but you are going to have to limit your questioning because this room will be vacated and we will be swept into the hall. That is reality beyond belief in this place. So, if you can respond to him in just 30 seconds, it is very important that you do so.

Dr. HUNT. OK. In a few words or less, 25 words or less: I had reasons to be concerned on sound clinical basis that if we continue to deny his request to return to his ship, he would become more agitated, develop the full-blown psychosis that would have in fact required in-patient hospitalization in an American facility, and I saw a lot of difficulty involved in that.

Senator METZENBAUM. Thank you.

Senator SIMPSON. Thank you. I did appreciate your testimony. I realize fully that you deal in a science, a profession that is difficult to express yourselves in the swift questions. Thank you so much, Dr. Caruthers and Dr. Hunt.

Senator HUMPHREY. Mr. Chairman, are you dismissing the witnesses?

Senator SIMPSON. I intended to. I have no choice unless you want to have the rest of the hearing in the hall, because that is where it is going to take place in about 10 minutes, and I want to hear this man from the Ukrainian-American——

Senator HUMPHREY. If the Ukrainian witness would be willing to come back on another occasion.

Senator METZENBAUM. Oh, I don't think it is fair to ask him to do that.

Senator SIMPSON. He is from Cleveland, OH, and I have promised to hear him. We can sit down——

Senator HUMPHREY. Maybe the doctors are from Ohio.

Senator SIMPSON. In any event, I will be glad to visit with you about some——

Senator HUMPHREY. Dr. Hunt seemed to imply that Medvid was close to a full-blown psychosis, that "if we dallied with him much longer he was going to blow his top" 'and yet he found him sound to make a decision about his fate.

BEST COPY AVAILABLE

Senator SIMPSON. I will let you have 30 seconds to respond to that, if you wish.

Dr. HUNT. I would be very willing for this committee to get in touch with the American Psychiatric Association and a panel of psychiatrists be appointed by the board of trustees of the APA to review in detail my report, my findings, and the conclusions of that committee report back.

Senator SIMPSON. I think that is a very appropriate response. We may get back to you. We will be in contact with you. Thank you, Senator Humphrey.

Now, please, Mr. Taras Szmagala, a member of the board of directors of the Ukrainian National Association. Sir, it is nice to have you here.

STATEMENT OF TARAS SZMAGALA, MEMBER, BOARD OF DIRECTORS, UKRAINIAN NATIONAL ASSOCIATION

Mr. SZMAGALA. Mr. Chairman and members of the committee, Mr. Metzenbaum, my Senator, I am pleased to have this opportunity to explain why the case of Miroslav Medvid is of special concern to Ukrainian-Americans and to all Americans.

The depth of our feelings can only be conveyed by personalizing them. Growing up as Taras Szmagala, son of immigrant parents who came to this country seeking freedom, I was often asked the heritage of my name. As I proudly stated "Ukrainian," I was usually confronted with a blank stare and sometimes with ridicule. Yet, we continued to believe in the United States, its system, its institutions, and we became a part of American society.

For us, the discussion of Miroslav Medvid is not an academic one but an emotional one, because it is real life. He could have been a member of any of our families and possibly was a member of one Ohio family, but U.S. officials never gave him an opportunity to find out.

While we did not know the seven Astronauts who tragically perished last week, all Americans felt close to them and we all mourn their loss. In much the same way, all Ukrainian-Americans felt close to Miroslav, who wanted in his words to Mrs. Padoch to live in an "honest land," and now we mourn his fate.

Some government officials, however, refuse to understand and treat our pleas with callousness.

Much of the Ukrainian immigration to this country was a result of our being driven from the Ukraine. To remain free, many Ukrainians, like other Eastern Europeans, left everything they had to escape, to reach the promise of America. They left their possessions, their homes, their land, their money, in many cases their families. In this quest for freedom, many died.

Those who arrived here arrived only with their language and their culture. They did not have possessions, their land, their nation to pass on to their children. Their heritage had to be preserved in their language and the cultural background they could impart to the next generation.

Mr. Chairman, our Government's handling of the Medvid matter was so arrogant, so insensitive as to demean our language and our culture. In addition, the actions of our Government were inconsist-

59-577 O - 86 - 3

BEST COPY AVAILABLE

ent with its own policies and showed the officials involved to be witless, insensible pawns of the Soviet Union's ongoing program of russification, a long-term program to erase the identities of the occupied nations in the Soviet Union.

The U.S. official position against russification was reaffirmed as recently as the President's 19th semiannual report to the Helsinki Commission covering the period ending October 1, 1985. One of the key elements in the Russian Communist russification plan is to discredit and destroy Ukrainian culture and Ukrainian language. They want the whole world to believe that Ukraine is at most a region of Russia, that the Russian language and Ukrainian language are the same, that the Ukrainians are really Russians. They want the world to see Soviet and Russian as synonymous.

The INS today seemed to have accepted this in their testimony, and this is not the case. Nevertheless, despite our Government's policy of opposition to russification and the method Medvid affair, our Government assisted Soviet russification.

Miroslav Medvid is a Ukrainian. His native language is Ukrainian. When our Government officials denied Miroslav Medvid a Ukrainian interpreter so that he could converse in his native language, and when our Government had Miroslav sign a Russian statement, this Government assisted the Soviet Union, we played into their hands and we were duped.

Partially becase of this unjustified governmental action, the news reports of the events could draw little if any distinction between Ukrainian and Russian for the nonethnic Americans. The message to Ukrainian-Americans was that our Government did not make a distinction or regretfully may not have known the distinction.

The ramifications of these actions went far beyond poor Miroslav. The message to Ukrainian-Americans and the message to all Eastern European-Americans was that our language is not important, our values, our ethnic heritage is meaningless in our adopted country, our country of hope.

Mr. Chairman, you must be able to imagine the disillusionment. What are Ukrainian-Americans to believe? The INS went to great lengths to find a Ukrainian interpreter when Miroslav first escaped to freedom. Whatever else happened at that time, the Government was certainly on notice as to Miroslav's nationality and language. Nevertheless, for subsequent interviews the Government used a Russian translator. had Miroslav sign a Russian language statement, and even if it could be satisfactorily established that Miroslav fluently speaks Russian, in addition to his native language, why a Russian interpreter, why a Russian language paper statement, why not Ukrainian, and who made these decisions?

There is no shortage of Ukrainian-speaking people in this country or in the executive branch of our Government. This was well established in the many filings which our community made in the Federal courts during this matter. On the morning of the second Medvid interview, the National Security Council was given a list of employees of the Department of Justice who are fluent in Ukrainian and English. The NSC assured representatives of our community that Miroslav would be interviewed in Ukrainian, in an Ameri-

BEST COPY AVAILABLE

can setting, not a neutral setting, that a medical exam would be given without Soviet authorities present.

We now know that no blood test, no urinalysis, no private doctor-patient conversation took place, and that the Soviet doctor admitted to administering drugs to Miroslav. While our Government condemns Soviet abuse of medicine and psychiatry for political purposes, we became part and party to that very practice.

To add insult to injury, mere hours after these assurances were made, the Soviet Ambassador was the first to announce that "the matter is over."

We are continually told that Miroslav Medvid had ample opportunity to tell U.S. officials that he wished to stay. For just a moment, please try to put yourself in his position. He jumped ship seeking freedom, only to be dragged back to Soviet custody by U.S. officials. He is interviewed again by U.S. officials, not in his native language but in a language he is forced to speak in the Soviet Union. He is given a medical and psychiatric examination in the presence of the Soviet doctor who has been drugging him and who has presided over his torture.

What is he to think about U.S. intentions? Imagine if you can his fear and his confusion. Richard Cohen summed it up best when he wrote, "Medvid is forgiven for thinking that in the end his choice did not matter. The Soviet Union is not the kind of country that cares about a single sailor, and now it appears that neither are we."

So, we appealed to you, our elected representatives, for help. Your response to support was overwhelming, yet your petitions to the President, your resolutions and even your subpoena did not stop the *Marshal Konev* from leaving with Miroslav. Our communities never fully understood our political system, but believe that Congress did have the power and did represent them, and now the confidence of ethnic Americans in Government institutions is shattered.

When the Soviet ship left New Orleans on November 11, a part of each Ukrainian-American left with it. One Ukrainian-American who came to this country as a child who is sitting in this room right now wrote, "I remember when I arrived in New York harbor one morning and everyone on the ship wept with tears in their eyes at the most beautiful symbol of freedom, the Statue of Liberty. Today I am certain that Miss Liberty is crying."

We all believed in the commitment of the United States to defend the freedom of oppressed people everywhere. We fought in every war that the United States has fought for freedom, and yet when it came time to defend the freedom of one Ukrainian, not in some far-off land, but on land purchased by Thomas Jefferson, our Government failed us.

Yet these actions were acclaimed by Alan Nelson, the Commissioner of INS, when he said in his congressional testimony that he was "proud of the U.S. Government handling of this situation." How sad. How arrogant or, maybe more accurately, how stupid.

Let me conclude, Mr. Chairman, with an incident that demonstrates the ramifications of the Medvid affair. It occurred in my own hometown of Cleveland only weeks after the Medvid case. A Polish sailor jumped ship and took refuge with the Polish-Ameri-

BEST COPY AVAILABLE

can community. That community, having lost all confidence in American institutions, turned to the only institution in which they still had confidence, the church.

The sailor was placed in the custody of their parish priest and only through the intervention, the personal intervention of Senator Metzenbaum and his staff, a Polish-American staffer of his in Cleveland, was that sailor finally turned over to U.S. Government authorities.

Mr. Chairman, we can lose our land, our possessions, our money and still survive, but we cannot afford to lose our hope and our belief in the future and our belief in this country. That hope, that confidence, that belief has been shattered because our Government has lost its integrity.

The fate of Miroslav Medvid, our Ukrainian brother, is sad. The fate of the United States is tragic. We now look to you, Mr. Chairman, to provide the leadership to accomplish three very important tasks. First, we must secure the freedom of Miroslav Medvid. Second, the Congress must thoroughly investigate this matter and question individuals "at the highest levels of the White House, the Department of State, and the Department of Justice," where the decisions were made according to Assistant Secretary of State Ridgeway.

We must never allow this to happen again. Third, together we must work to restore the faith and confidence of ethnic Americans in their Government and its institutions. A commitment to search out the truth in this matter, of what really happened, will be a step in the right direction of resolving this third task.

Mr. Chairman, thank you very much.

[The complete statement of Mr. Szmagala follows:]

BEST COPY AVAILABLE

Prepared Statement of Taras Szmagala

Mr. Chairman, I am pleased to have this opportunity to explain why the case of Miroslav Medvid is of such special concern to the Ukrainian-American community and, indeed, to all ethnic-Americans. The handling of the Medvid case should be, and I believe is, of concern to all Americans, but there is a special relationship between the Ukrainian-American community and Miroslav Medvid.

I think that the depth of feeling of each Ukrainian-American can best be conveyed by personalizing the feelings of Ukrainian- and other ethnic-Americans. In my case, my parents left their native country seeking freedom. They left behind their land, their belongings, and, most importantly, their families. They arrived in their adopted country with nothing but their customs, their language, and their hopes for a better future - a future that promised freedom and the opportunity to establish a new life, a new heritage to pass on to their children.

Growing up as Taras Szmagala, I was often asked the heritage of my name. As I proudly stated "Ukrainian", I was usually confronted with a blank stare or worse, ridiculed and made to feel inferior. It is in this context that many of us became part of American society. It took many years to overcome the ridicule and the bias of some of our fellow citizens. But, Ukrainian-Americans were driven by faith in the American dream and hope for the future. We still believe in these cliche-sounding words, and they are still dear to us because we know the alternative - our families live it every day.

When the issue of Miroslav Medvid comes up we get excited because it is an emotional issue for us. It is an issue that touches each of us. While we can sit here and have an intellectual discussion about what occurred, why, and what policy changes are needed, for us it is real life. Miroslav Medvid could easily have been a member of any of our families. In fact, a Medvid family from my home state of Ohio thinks that Miroslav may be a member of their family. United States officials never gave them the opportunity to find out.

Perhaps what is most frustrating for Ukrainian-Americans is callousness of government officials in understanding our feelings

BEST COPY AVAILABLE

about Miroslav Medvid. He is one of us and we did not care about the politics, we just wanted to save his life. Now we mourn his fate. Just as all Americans mourn the fate of the seven astronauts, though we did not know them personally, we feel close to them and their families. Yet, government officials could not and would not understand that type of relationship with Miroslav Medvid. That insensitivity made a bad situation a disaster.

I am not here to recount all the details of what happened during those weeks in October and November, but I must highlight those issues that are of special concern to our community.

When Miroslav first jumped ship, he requested a Ukrainian interpreter. The Border Patrol contacted Irene Padoch, a contract employee of the Immigration and Naturalization Service. I know Irene Padoch well and she is a member of the Ukrainian National Association, an organization on whose Board of Directors I have served for over twenty years. In her sworn affidavit, she maintains that she told the Border Patrol officials three times that Miroslav was seeking asylum.

Later, when it became clear that those officials acted improperly, an INS official attempted to shift blame to Mrs. Padoch by publicly stating to the press that the confusion was due to Mrs. Padoch's "broken English". It is inconceivable to me that the INS would hire someone as an interpreter who is not competent and whose English is so bad as to not to be able to be understood. That comment was insulting to not only Mrs. Padoch but to all Americans who speak with an accent.

Mr. Chairman, I want to emphasize that this issue touches not only Ukrainian-Americans but all ethnic-Americans, particularly those from Eastern Europe. We all shared in the tragedy of Simas Kudirka, a Lithuanian sailor, when he was forcibly returned to the Soviet Union by U.S. Coast Guard officials in 1970. We also rejoiced together when the U.S. Government secured the freedom of Simas.

We all believed our government in 1970 when it told us that the tragedy of Kudirka would never happen again. Yet, fifteen years later, another sailor was dragged, kicking and screaming, by U.S. officials to a Soviet ship. Mrs. Padoch believed the Border Patrol officials who told her that Miroslav would be held overnight and

BEST COPY AVAILABLE

another interview would be conducted the following day. What happened? Why the urgency to return Miroslav that night despite U.S. stated policies and the commitment of the Border Patrol to detain him?

I do not want to appear melodramatic, but the image of Miroslav Medvid beating his head on the rocks of the Mississippi bank brings to mind another sorry incident in U.S. history which many in our community personally witnessed - the repatriation to the Soviet Union of Eastern Europeans after World War II. Despite witnessing people committing suicide rather than return, U.S. officials forced thousands of our people into Soviet custody. That incident forty years ago and the one three months ago demonstrate how insensitive governments can be.

Ukrainian-Americans have believed in their government. They came from a land that was governed by terror and fear to a country that is free. They believed in the commitment of the U.S. Government to defend those seeking freedom. The Medvid incident has severely shaken that confidence and our faith in our government. More importantly, it has scared many ethnic-Americans. When you come from a nation of fear to a free nation and your confidence in its system is shaken, you can only feel fear again. The reaction in many ethnic communities is not just to question the actions of some government officials but to question government policy also.

The discrepancy between government policy and government actions is best illustrated by the choice of interpreters for the second interview of Miroslav Medvid. Despite the fact that Miroslav's native language is Ukrainian and that he requested a Ukrainian interpreter, the Department of State provided a Russian interpreter.

Let me take a minute to explain why this is so important. The Soviet Russian Government has a policy of russification, the goal of which is to eradicate all non-Russian cultures and languages in the Soviet Union. In the President's 19th Semi-Annual Report to to the Commission on Security and Cooperation in Europe, which covered the period of April 1, 1985 to October 1, 1985, he pointed out that efforts to eliminate the Ukrainian language in Ukraine have intensified. U.S. Government policy opposes the forcing of Ukrainians to speak Russian in the Soviet Union. Yet, U.S. Government officials forced Miroslav Medvid, a Ukrainian, to speak Russian in the United States.

BEST COPY AVAILABLE

The Soviet Union acknowledges the existence of Ukrainians when it is to their benefit, such as an added seat at the United Nations, while systematically trying to destroy everything associated with the Ukrainian identity - history, culture, and language. U.S. policy has not only allowed the Soviets to do this but has supported it by allowing cases like Medvid.

Ukrainian-Americans are sensitive to this issue because they know their families in Ukraine are denied the right to speak Ukrainian. When they came to this country, one of the few things they could bring was their language. Now the U.S. Government has taken an action that supports russification.

It was not due to any lack of Ukrainian interpreters that was responsible. In fact, on the morning of the interview with Miroslav, a list of Department of Justice employees, fluent in Ukrainian, was provided to the National Security Council. The interviewers were individuals from the Soviet desk of the State Department and should have been sensitive to this issue. Even the government's psychiatrist noticed that Miroslav felt more comfortable speaking Ukrainian and pointed that out in his report. Again, it is the discrepancy between U.S. policy statements and actions that has shaken our confidence in our government; but it does not end at the language issue.

On the morning of the second Medvid interview, a delegation of Ukrainian-Americans were meeting with representatives of the National Security Council to be briefed on the Geneva Summit. When Ambassador Jack Matlock arrived, he stated that he was just in touch with State Department officials in New Orleans and offered to brief the delegation on what was transpiring. When it was suggested that the interview be conducted in a "neutral" setting, the Ambassador reacted by saying that it would be conducted in an American setting meaning on an American base with no Soviet officials present. He explained that normal procedures are for the potential defector to be privately examined by American doctors and privately interviewed by American officials. Only after the individual makes his decision are one or two Soviets allowed to meet with the person, and then in the presence of U.S. officials.

Having confidence in the words of an American official, especially someone with such an important position, the delegation

BEST COPY AVAILABLE

left the White House reassured of their confidence in the system. Imagine their surprise that afternoon when Soviet Ambassador Dobrynin announced that Miroslav Medvid was returning to the Soviet Union. Imagine their greater surprise upon learning that Soviet officials were present with Miroslav at all times, even as he slept.

Mr. Chairman, please tell me how I can go back to my community, a community that does not quite understand the system but had faith in it, and explain these discrepencies between government policy and action. But again, it does not end there.

Eastern-Europeans have always respected and supported the military, even when few other Americans did, because they understood the need for a strong military to defend freedom. They assumed that if any U.S. officials understood the Soviets, it was military officials. That belief was shaken when a military doctor pronounced Miroslav Medvid "in full control of his senses" without a thorough medical or psychiatric examination.

Our community knows that the World Psychiatric Association condemned the Soviet use of psychiatry and drugs on dissidents in 1977. They know that the Soviet Union withdrew from the WPA in 1981 to avoid further condemnation. They expected that a psychiatrist, especially a military psychiatrist, would know of Soviet misuse of medicine for political purposes.

Yet, with no blood test, with no urinalysis, and with the admission of the use of drugs on Miroslav by the Soviet doctor, our military doctor and psychiatrist pronounced Miroslav "in full control." Again, the discrepency between our government's condemnation of Soviet medical practices and its support of it in practice has shaken our confidence in our institutions.

For a moment, please try to put yourself in the position of Miroslav Medvid. He jumped ship seeking freedom in the country that stands for freedom. He is forcibly returned to the Soviet ship to face terror and torture. He is interviewed again by U.S. officials but not in his native language but in Russian, the language he is forced to speak in his native country. He is interviewed in the presence of four Soviet officials including the doctor that has been drugging him. Imagine, if you can, his fear, his confusion. Richard Cohen pointed out that confusion best when he wrote:

BEST COPY AVAILABLE

"Medvid is forgiven for thinking that in the end his choice did not matter. The Soviet Union is not the kind of a country that cares about a single sailor. And now, it appears, neither are we."

But the confusion of Ukrainian- and ethnic-Americans goes even one step further. As our communities adapted to the system of their new country, they were encouraged to believe that the political system protects them. So when the Medvid issue arose, they appealed to their elected representatives. When the overwhelming majority of Members of Congress of both Houses and of both political parties supported the efforts to grant asylum to Miroslav, there was a confidence that the system really did work.

That confidence was shattered when the Soviet ship left New Orleans harbor despite the appeals of Members of Congress to the President and the Secretary of State, despite the Congressional resolutions that were passed, despite the editorials from newspapers from around the country, and despite a Senate subpeona. The system did not work for Ukrainian-Americans and we were in shock. What went wrong?

When the Marshal Konev left New Orleans harbor on November 11, 1985, a part of each Ukrainian-American left with it. I saw a copy of a letter written by a Ukrainian-American who came to this country as a child. She wrote to the President that when her ship entered New York harbor one morning, everyone looked, with tears in their eyes, at that most beautiful symbol of freedom, the Statue of Liberty. She would provide them with the freedom they were seeking and protect them from the oppression they had fled. The letter continued that on the morning of November 11, 1985, she was certain that it was Miss Liberty who was crying.

Ukrainian-Americans, like all ethnic-Americans, believed in the institutions of this nation, in its dedication to freedom, and in its determination to defend all people seeking liberty and justice. With those beliefs, ethnic-Americans fought and died for this nation in World War I, World War II, the Korean War, and the Vietnam War. They continue to proudly serve in the Armed Forces of this nation. Yet in November, when it came time to defend the right of one Ukrainian sailor seeking freedom, not in some far-off land, but on the shores of America's river, the Mississippi, our government failed them.

BEST COPY AVAILABLE

The issue, Mr. Chairman, is that Ukrainian-Americans and many other ethnic-Americans feel a deep hurt and an intense anger. The hurt is from a sense of betrayal of everything we believed America stood for. The anger is from the insensitivity of government officials who dismissed what was important to us.

The height of this anger was focused on the arrogance of some government officials such as Mr. Alan Nelson of the INS who stated before both this committee and a House committee that he was "proud of how the U.S. Government handled this situation." Rep. Tom Lantos, a refugee from Hungary, could not believe his ears and stated that "as proud as you are of how the U.S. Government handled this situation, the Senate, the House, and the American people are ashamed." That, Mr. Chairman, was the only light in an otherwise very dark period for all ethnic-Americans.

Let me conclude by pointing out an incident that occurred in my home town of Cleveland only weeks after the Medvid incident. A Polish sailor jumped ship and took refuge with the Polish-American community. Having lost all confidence in American institutions, that community turned to the only institution that they still could believe in - the Church - and placed the young sailor in the custody of their parish priest. It was only through the coaxing of a Polish-American on the staff of Senator Metzenbaum and firm personal commitments by both the staffer and the Senator, that the sailor was turned over to U.S. Government authorities.

Mr. Chairman, people can lose their land, they can lose their possessions, they can lose their money, and still survive. They can never afford to lose their integrity nor their hope and their belief in a better future. Three months ago, many ethnic-Americans lost their hope and belief in our system because our government lost its integrity. The fate of Miroslav Medvid, our Ukrainian brother, is truly sad, but the damage to our government is tragic.

This Committee, the Congress, and the whole government have three tasks before it. First, we must secure the freedom of Miroslav Medvid. Second, we must dig until we find answers to those many questions that exist about what happened in October and November and take steps to never allow it to happen again. Third, we must restore the faith and confidence of all ethnic-Americans in our government and its institutions. By taking the first two tasks to heart, we can begin to solve the last problem. Thank you, Mr. Chairman.

BEST COPY AVAILABLE

Senator SIMPSON. That is a very powerful statement and you say it with great depth and feeling and I hope that, as chairman of this subcommittee, I can meet that test, that charge. I can only share with you that as I deal with the issues of immigration and refugee policy, I honestly share with you that if you feel there has been some insensitivity, more than that, some terrible maliciousness in confusing the words "Russian" and "Soviet," just know that in the area I deal with they do not even know the difference between an economic migrant and a refugee.

So, it is not done out of harshness or mean spirit. It is just the way the American people are. The toughest part of this is that people do not know the difference between a legal undocumented person and an economic migrant, extended voluntary departee, a permanent resident alien, a temporary resident alien, and a refugee. Imagine getting to mess around in that area, when they do not make those distinctions.

So I, sir, in reading your testimony, do not in any manner sense any intent of a nationalistic or ethnic slur for it was a confusion for me.

I thank you. I have a question or two and I am going to enter it into the record, and I appreciate your patience. Senator Simon, did you have——

Senator SIMON. I have no questions. I simply want to commend you for your concerns and concerns of the Ukrainian community. Unfortunately, sometimes it takes an identifiable ethnic group, as you mentioned the Lithuanian sailor, it was the Lithuanian community that really helped to prod our conscience to do what we should have done. And while to use the chairman's words, "this case was botched," and I do not think there is any question about that.

I hope we have learned a lesson and we will at least for a while—we seem to periodically have to go through these things before we stand up for what we ought to stand up for, but you have helped to move us in the right direction and I simply want to commend you.

Mr. SZMAGALA. Thank you, sir.

Senator SIMPSON. Thank you, Paul. Any questions will be submitted. Doctors reports may be submitted for the record, questions, any unanswered questions of the day will be answered and handled in subsequent hearings. Staff investigations will continue and further hearings will be held and I thank you very, very much, Mr. Szmagala.

Mr. SZMAGALA. Thank you, Senator.

Senator SIMPSON. That concludes the hearing.

[Whereupon, at 1:48 p.m., the hearing was adjourned.]

BEST COPY AVAILABLE

THE ATTEMPTED DEFECTION OF MIROSLAV MEDVID

FRIDAY, MARCH 7, 1986

U.S. SENATE,
SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:10 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Alan K. Simpson, (chairman of the subcommittee) presiding.

Also present: Senators Denton, Simon, Grassley, and Humphrey (ex officio).

Staff present: Richard Day, chief counsel and staff director; Carl Hampe, counsel; Dee Dee Herzog, staff assistant; and Stephanie Kellum, staff assistant.

OPENING STATEMENT OF HON. ALAN K. SIMPSON, A U.S. SENATOR FROM THE STATE OF WYOMING, CHAIRMAN, SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY

Senator SIMPSON. The hearing will come to order.

The reason for the delay is that Senator Simon and Senator Grassley, members of the subcommittee, are yet to arrive. We need to do a procedural item right at the initiation of our hearing, and that is to move that the subcommittee go into closed session very briefly and only for one purpose, to discuss whether testimony we expect to receive would disclose any matter which should be kept secret in the interests of "the confidential conduct of the foreign relations of the United States." That is the statutory reference.

That will take less than 5 minutes and it will be directed only to one area, and that is the contingency plan of the INS. It will have nothing to do with any State Department activity. That will all be conducted here in the hearing room.

After that brief closed session, which, as I say, should not last over 5 or 10 minutes, we will return to open session to vote on the record whether we should indeed go into a closed session for that part of the hearing, and that is what I would share with you at this time.

At this time—and we can meet here in the adjoining room—I would make that motion and ask for a second from my fellow member of the subcommittee, Senator Denton, if he is so disposed.

BEST COPY AVAILABLE

OPENING STATEMENT OF HON. JEREMIAH DENTON, A U.S. SENATOR FROM THE STATE OF ALABAMA

Senator DENTON. No, thank you, Mr. Chairman. As I previously informed you, I have a very important meeting I have to attend, but I want to commend you for holding these hearings. I have a number of staffers here who will pursue my interest in this matter, and questions I hope you will submit to the witness in writing.

Senator SIMPSON. Indeed. We will be here until approximately 4 or 5 o'clock in the afternoon doing our work.

Senator DENTON. And I do second your motion to go into closed session, sir.

Senator SIMPSON. Well, let us do that now and then we can get you on to your other material.

Senator Humphrey, we certainly appreciate having you join us, and we will return in just a few minutes.

[The subcommittee adjourned to closed session.]

Senator SIMPSON. A majority of the subcommittee was in the brief closed proceedings, with Senator Humphrey and certain selected staff of other Senators who are properly cleared.

It was determined—and we come back now into open session—to make the motion to go into closed hearing at the conclusion of our open proceedings here today for Commissioner Nelson's, Mr. Brandemuehl's and Mr. Walters' testimony, which has solely to do—and is limited to—the issue of a contingency plan which the INS felt would have been necessary had Mr. Medvid not been released from the vessel.

It is felt that that is a very sensitive area and if revealed could be very detrimental to our foreign relations and the cooperation of all countries who use our waters. For that singular purpose, then, I would move that we go into closed session at the conclusion of our activities of open session, where everything else will be discussed today.

I do make that motion.

Senator SIMON. I will second that motion, Mr. Chairman.

Senator SIMPSON. I thank you, Senator Simon. So we will go forward on that basis. We would have a vote of the subcommittee. A rollcall vote, I think, would be appropriate.

Do we have our clerk? Well, we used to have a clerk.

Mr. DAY. Mr. Grassley.

[No response.]

Mr. DAY. Mr. Denton.

Senator SIMPSON. Aye, by proxy.

Mr. DAY. Mr. Kennedy.

Senator SIMPSON. Aye, by proxy.

Mr. DAY. Mr. Simon.

Senator SIMON. Aye.

Mr. DAY. The vote is——

Senator SIMPSON. And aye from the chairman.

Mr. DAY. The vote is four ayes.

Senator SIMPSON. OK, thank you for that, and we will have that later in the day.

BEST COPY AVAILABLE

Well, good morning to you all, I appreciate your patience, and welcome to you. We are here to try to do our business in a responsible and civil way. We will proceed in that manner.

This is the fourth hearing the subcommittee has held in conjunction with the continuing investigation of the Miroslav Medvid incident. We had our first hearing November 5, only a matter of days after the incident. We had a second hearing a few days later, where classified materials relating to the incident were distributed to the subcommittee.

The staff continued its investigation through the Christmas recess and, on February 5, a third hearing was held. During the President's Day recess, the subcommittee continued its investigation.

The chief counsel, Mr. R.W. Day, a man in whom I have the greatest trust and confidence, conducted an extensive 6-day investigation in Louisiana, interviewing nearly 2 dozen persons who were connected or had a substantial personal involvement in the Medvid case.

In each of those prior open hearings, witnesses with firsthand knowledge of Mr. Medvid and the Medvid interviews presented testimony. We had Irene Padoch, the interpreter for the first interview; she testified in November.

In February, we had military doctors who examined Mr. Medvid, as well as a Border Patrol official who participated in the interviewing; he testified.

Today, we will receive testimony from additional witnesses with firsthand knowledge—personal, hard knowledge—of the facts, witnesses who participated in the three interviews that Medvid had with U.S. officials.

We all have many questions concerning the Medvid case. That is my position; I have many questions. Members of the subcommittee and Senator Humphrey and others, have serious questions of great importance to them.

I believe that many of those questions might be answered today. That is our purpose. The witnesses, I think, should expect some tough questions. Good government demands that the good and the tough questions be asked and, most importantly, that they be answered and, wherever possible, become part of the public record.

However, we who ask the tough questions must also permit the witnesses to respond and give their answers fully to the question. It is unfair in our truncated process of hearing to both the witness and to the integrity of the system to get into the "spirit of the hunt" and interrupt or cut off a witness before he or she has completed their response. That is not a new situation for this chairman; that is something I have done in 5 years of hearings on issues that always generate plenty of juice.

I thoroughly understand the problems caused by time limitations on testimony and questions, but today we will make every effort to provide all of the time possibly needed to get into all of the issues, see that the questions are fully asked and fully answered.

Let me just say one other thing that has been a troubling issue for me. Members of the Ukrainian-American community have written me some very harsh, shrill, and nasty letters. This is most puz-

BEST COPY AVAILABLE

zling to me, I can tell you, being called antitruth and other things of that nature.

I have devoted a great deal of time to this issue, and I will devote a great deal more. So has the staff. I held the first hearing before anybody did anything, and I will hold a lot more.

I hope I am fully sensitive. Certainly, I think I have been in all aspects of immigration and refugee policy, an area filled with fear, guilt, emotion, and racism. I have had to be or we would not get a thing done in this area.

So I have come to know the passions that surround the issue of the russification of the Ukraine and the assault literally upon their culture and upon their language. I understand that, but I am not part of that. There has been no conscious intent in this subcommittee to be involved in that, and I regret that that kind of activity has been attributed or directed to me. It is puzzling and disappointing.

So we are here to do a little truth-seeking, and I have brought along a light lunch and a leather pillow to sit on. If anyone else on the subcommittee wishes to speak and make a statement, I would certainly like to have that at this time.

I appreciate the subcommittee very much, they have been, again, attentive, curious, probative, and that is what brings great pleasure to me to have the five of us operate in that fashion, and that consists of the ranking member, Senator Kennedy, and Senator Grassley, Senator Simon and Senator Denton, the five of us.

So if you have any statements at this point, I would certainly entertain that.

OPENING STATEMENT OF HON. PAUL SIMON, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Senator SIMON. Mr. Chairman, I do not have any prepared opening statement. I simply want to express my appreciation for your having this. There is no question in my mind that you have handled a very difficult situation with a great sense of balance.

No one should question for a moment either your ability or your patriotism or anything else I have not read those letters and I am not volunteering to read them either, Mr. Chairman.

But I am proud to be a colleague of Senator Simpson. He has been an exceptionally fine legislator.

Let me also commend Senator Humphrey for his interest. He was the first one to speak on the floor on this matter. I believe I was the second one to express concern about this matter on the floor.

I think everyone acknowledges that some real mistakes were made in the handling of this affair. I hope we can profit from those mistakes and not repeat them.

Thank you, Mr. Chairman. I might add that I am going to have to be on the floor very shortly and my absence from the subcommittee does not indicate any lack of interest in this subject.

Senator SIMPSON. I thank you, Senator Simon.

Senator Grassley.

BEST COPY AVAILABLE

OPENING STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA

Senator GRASSLEY. I have no opening comment, but I would like to take advantage of the opportunity because I may not be able to question the witnesses for the same reason that Senator Simon might not, that being the consideration of the constitutional amendment on the floor of the Senate.

I would like to express a thought, however and, by so saying, leave my point of view about what went wrong for this sailor who asked for asylum did not get it.

Regardless of the level of administrative decisionmaking involved with this sailor's situation, it would seem to me, considering the tradition we have in this country and considering what we know about the lack of freedom in the U.S.S.R., that any employee of the Federal Government involved in situations like this should give every benefit of the doubt to somebody who is seeking freedom.

If that benefit of the doubt had been given in this case, I do not see how this individual could have ever been returned to that ship. Admittedly, I am not out there enforcing the law, and I suppose it is easy for those of us in Congress in an oversight function to sit on high and try to find fault.

But considering the laws and tradition of our country and more importantly considering how we know that people, if given any opportunity, would seek freedom from the slavery they know behind the Iron Curtain, I do not think there would be any doubt in anybody's mind that a person who said he wanted political asylum after jumping from a Russian ship and swimming to shore, as this person did, should not have that.

Now, I do not know what sort of questions I can ask to bring about some answers, and I may not be present to ask any of these questions because of these other obligations, but I want you to know that these thoughts are in the back of my mind.

Senator SIMPSON. Senator Humphrey, I do very much appreciate your sincerity in the issue; that is very apparent. You are an authentic person; I have learned that. We came here together and I know the intensity with which you pursue this issue.

If you have any remarks, I would appreciate those.

OPENING STATEMENT OF HON. GORDON J. HUMPHREY, A U.S. SENATOR FROM THE STATE OF NEW HAMPSHIRE

Senator HUMPHREY. Thank you for permitting me to participate, Mr. Chairman, even though I am not a member of the committee. I only regret that many members of the press, perhaps most, were under the impression that this hearing would be closed.

Senator SIMPSON. No, no. I want to interrupt right now. That impression was not given to the press.

Senator HUMPHREY. I thought we were not going to interrupt each other in the spirit of the hunt.

Senator SIMPSON. Well, I will interrupt on that one.

Senator HUMPHREY. Perhaps you can expand, then, because it was my impression that the information about the hearing was that it was going to be closed and that it was not until this morning that it was made known that the hearing would be open.

BEST COPY AVAILABLE

Senator SIMPSON. Excuse me?

Senator HUMPHREY. Am I mistaken?

Senator SIMPSON. I am sorry; I did not hear.

Senator HUMPHREY. When was the announcement made that the hearing would, in fact, be open?

Senator SIMPSON. Yes, counsel.

Mr. DAY. The original notice did say closed, and the Post this morning said closed. It was only yesterday that the chairman personally spoke to the Secretary of State to get an agreement that this would be done in an open session.

Senator HUMPHREY. But my question really is at what point was there some public announcement to the press that the hearing would be open. Was there ever a bulletin sent out or anything?

Mr. DAY. Our answers to calls for the last 2 days to the subcommittee have said that some parts would be open, but some parts would be closed.

Senator HUMPHREY. Well, in any event, the Washington Post, which I imagine is pretty conscientious about covering events, published in this morning's paper a notice that the hearing was closed.

Am I correct in that?

Senator SIMPSON. Apparently so, and if that is true, I owe you an apology. But I do know that inquiries to my office in the last 2 days have indicated that it would be open hearings, except for the possibility of a closed hearing on the issue of the INS contingency plan. I would also note for the record that representatives of CNN, ABC news, and the Associated Press are present.

Senator HUMPHREY. I thank the Chair for that clarification.

Senator SIMPSON. Well, let us go forward. The first panel this morning will be Border Patrol Agent Ernest Spurlock and Border Patrol Agent Joseph Bashaw. They are accompanied by their attorney, R. Travis Douglas.

Agents Spurlock and Bashaw are the border patrolmen who interviewed and processed Mirsolav Medvid on the night and early morning of October 24, 25, 1985, in New Orleans. Following their testimony and questions and answers, Agent Spurlock will then be joined by Deputy Chief Border Patrol Agent William Worley and Border Patrol Agent David Vannett, who, with Agent Spurlock, boarded the *Marshal Konev* and made a positive identification of Miroslav Medvid aboard that ship.

Deputy Chief Worley was in frequent contact with Miroslav Medvid until he finally returned to his ship on October 29. At the table, too, will be Commissioner Nelson of the INS.

Welcome to you all, and if any of you have any statements, that would be appropriate. If not, we can go into questioning.

Commissioner Nelson.

BEST COPY AVAILABLE

TESTIMONY OF A PANEL CONSISTING OF: ERNEST SPURLOCK, AGENT, U.S. BORDER PATROL; AND JOSEPH BASHAW, AGENT, U.S. BORDER PATROL; ACCOMPANIED BY R. TRAVIS DOUGLAS, COUNSEL, AND ALAN NELSON, COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE, U.S. DEPARTMENT OF JUSTICE

Mr. NELSON. Mr. Chairman, yes; I want to just make a brief opening statement here; no submitted testimony, but to lead in and then allow the other members that you have identified to make a statement and respond to questions.

I believe we have already submitted for the record, but I would like to make it part of the record, the fact that this is the third time that I have testified before the committee, the last time in conjunction with Roger Brandemuehl, the Assistant Commissioner for the Border Patrol.

In addition to the three testimony sessions here, we have testified before the Committee on Foreign Affairs, Subcommittee on Europe and the Middle East, in the House of Representatives.

I would like to submit all that testimony again for the record because it does cover many of the issues, and particularly on the issue of the identification of Medvid and the unfortunate issue raised by some of the alleged switch, or whatever.

[The following was received for the record:]

BEST COPY AVAILABLE

Prepared Statement of Alan C. Nelson

Chairman Simpson and Members of the Subcommittee,

I am pleased to be with you today to discuss the case of Soviet crewman, Miroslav Medvid and to review United States asylum procedures.

This testimony focuses on three areas. First, a summary of existing U. S. government procedures for handling potential asylum cases, specifically relative to crewmen from Soviet bloc countries. Second, a review of the INS handling of the matter. Third, a recounting of the chronology of the efforts to reinterview Mr. Medvid in a neutral setting.

We believe the existing procedure for handling potential asylum cases for crewmen from Soviet bloc countries are fundamentally sound as written and that no significant changes are mandated by the Medvid case. If these existing procedures, which require supervisory review, contact with INS headquarters and the Department of State, had been followed, we believe Mr. Medvid would not have been summarily returned to the shipping agents and hence to the soviet vessel without a thorough interview and determination of his intentions. The existing operating instructions are attached.

As indicated mistakes were made in the initial handling of the Soviet sailor, Miroslav Medvid, who deserted his vessel, the M/V Marshal Konev, in New Orleans, Louisiana, on October 24, 1985. When the fact of Mr. Medvid's premature return to the Soviet cargo ship became known, actions were promptly initiated by the Immigration and Naturalization Service and in conjunction with the Departments of Justice and State, the National Security Council, the U. S. Coast Guard, and the U. S. Customs Service to assure that Mr. Medvid would have an opportunity to claim asylum after due deliberation in a neutral setting. Through careful and vigorous action, the circumstances were achieved whereby Mr. Medvid was thoroughly interviewed and examined by United States officials in a neutral setting to ascertain his decision on remaining in the United States or returning to the Soviet Union.

The Incident

The Soviet crewman, Miroslav Medvid, arrived in the U. S. October 24, 1985, on board the soviet vessel M/V Marshal Konev at Belle Chasse, Louisiana. The crew was inspected by the Immigration Service, and with the exception of four officers, was denied entry and detained on board in the late afternoon. Mr. Medvid subsequently jumped over the side of the vessel and swam to shore. Mr. Medvid was given a ride into New Orleans,

BEST COPY AVAILABLE

Louisiana, by a local citizen and delivered to the New Orleans Police. Mr. Medvid was then taken to the New Orleans Harbor Police Headquarters. The U.S. Border Patrol had been contacted and took custody of Mr. Medvid and transported him to the Border Patrol Station in New Orleans in the early evening. It was ascertained by the Border Patrol agents that Mr. Medvid was from the Soviet Union and had deserted his vessel. An INS interpreter with capacity in Ukranian was contacted in New York City to assist in the interview of Mr. Medvid. The processing officer, after a lengthy telephonic conversation between the interpreter, Mr. Medivd and himself, made a determination that the Soviet sailor was not seeking political asylum, but was only a disaffected crewman. The officer then contacted the shipping agency for the vessel, who sent two employees to the Border Patrol station to return the Soviet sailor to his vessel. The shipping agency employees took charge of Mr. Medvid shortly before midnight on October 24.

Procedures for Handling Potential Asylum Claimants

In the early 1970's, an incident involving the return by U.S. officials of Simus Kidurkus, a Soviet seaman of Lithuanian ancestry, to his Soviet fishing boat triggered a review within the U.S. government of procedures regarding forcible repatriation. As a result, personnel in all federal agencies likely to encounter defecting seamen were advised of procedures to preclude forcible repatriation and the appropriate roles of the State Department and the Immigration and Naturalization Service in handling asylum claims from such persons. Initially outlined through field directives and operating instructions, procedures for handling asylum claims by INS officers were established by regulations published in December 1974. (First published in 8 CFR Part 108, these regulations were revised following the passage of the Refugee Act of 1980 as 8 CFR Part 208). The procedures established under the accompanying operations instructions have specific provisions for claims that may arise from crewmen from Communist bloc countries. Immigration inspectors are the officers who most often encounter crewmen who express an unwillingness to return to their home countries, but INS investigators and Border Patrol agents also have initial contacts with such persons.

Service operations instructions call for special procedures in so-called "immediate action" cases, which include among others cases involving Soviet nationals; diplomats; nationals of a Communist country who are present as part of an official visit, exchange program or state owned business or enterprise activity; or persons whose asylum request is politically sensitive or involves the possibility forced repatriation. In such cases Service officers are to contact the local INS and District Directors and give descriptions of the individual case, the nature of the claim and why it is considered an immediate action case.

BEST COPY AVAILABLE

The District Director makes an assessment of the case and then contacts the Associate Commissioner for Examinations in the INS Central Office, if he or she concludes that the alien's claim should be handled on an immediate action basis. The Associate Commissioner for Examinations in turn is responsible to contact the State Department Operations Officer.

After further interviewing of the claimant and the completion of an asylum application which the applicant signs, information is provided by telephone and otherwise as expeditiously as possible to the Bureau of Human Rights and Humanitarian Affairs of the Department of State. That bureau provides an advisory opinion on the asylum request, which is considered by the District Director in making his or her final decision on the asylum claim. In these and all other claims, the fundamental basis for a grant of asylum is that the person has established that he or she has a well-founded fear of persecution on account of race, religion, nationality, membership on a particular social group, or political opinion, if he or she should be returned to his or her country of nationality or of last habitual residence.

Service personnel frequently encounter persons who are not fluent in English or any other language known to them. Consequently, they will seek assistance from INS interpreters, other Service personnel, or local persons with a capacity in the language of the alien. The effort is made to give an asylum applicant a full opportunity to articulate the bases on which he or she fears return to his or her homeland.

These existing procedures were not followed in that the District Director was not contacted, no supervisory review of the decision to return the crewman was sought and neither the INS Central Office nor the Department of State was informed. If that had been done, we believe Mr. Medvid would not have been summarily returned to the shipping agent and hence to the Soviet vessel without a thorough interview and determination of his intentions.

Routine procedures were followed until the interrogation phase of the case by the Border Patrol agents. As the interview was conducted through the interpreter, several warning signs should have mandated exploration of the "immediate action" disposition pursuant to the operating instructions for political asylum:

- Mr. Medvid's Soviet nationality was an unusual factor and should have raised questions about the assumption that he was a routine ship jumper.

- When Medvid claimed he did not want to return to the Soviet Union

BEST COPY AVAILABLE

for "moral and political" reasons, further investigation was warranted to assure that he understood his options rather than concluding that he was not seeking political asylum and turning him over to the shipping agent.

- If there were problems with the quality of the interpretation or complications due to the telephonic connection over which the questions and answers had to be communicated, the Soviet sailor should have remained in INS custody until these problems were corrected.

- Finally, specific guidelines were available in the New Orleans Border Patrol Station setting forth procedures for handling Soviet nationals.

We believe that the existing procedures covering the handling of crewmen who indicate an unwillingness to return to their home country are fundamentally sound as written and that no significant changes are mandated by the Medvid case. If they had been followed, we are convinced that Medvid would not have been returned to his ship without further interviewing and review at a higher level by both INS and the Department of State.

In light of the Medvid incident, INS headquarters has cabled a copy of such operating instructions to all INS offices, both to emphasize the existing asylum procedures and to seek any suggested improvements.

The existing instructions are comprehensive; however, it is important to use this incident as an opportunity to thoroughly review the guidelines and consider changes in order to avoid any future similar incidents. An INS task force has been constituted for this purpose, with a preliminary report due by November 15, 1985. Training procedures will also be reviewed by this task force.

Actions Leading to the Reinterview of Mr. Medvid

I have dwelt at some length on the initial processing of Mr. Medvid, because questions have been raised about existing INS procedure and their appropriateness and sensitivity to applications from persons such as this Soviet crewman. Now I would like to detail what actions were taken, once the summary return of Mr. Medvid came to INS supervisory attention.

Mid-afternoon on Friday, October 25, I became aware of this situation following calls from the New Orleans District Office and the New Orleans Border Patrol sector headquarters to the Associate Commissioner

BEST COPY AVAILABLE

for Enforcement. At that point, the Southern Regional Commissioner, located in Dallas, Texas had already ordered Border Patrol agents to board the M/V Marshal Konev and try to return Mr. Medvid to the shore. This was unsuccessful. The Associate Commissioner for Enforcement instructed New Orleans to contact the U.S. Coast Guard and ask that they dispatch a vessel to the scene to insure that the Soviet ship not depart. This was done. I directed that the Department of State be informed and personally contacted the Deputy Attorney General. We ordered a debriefing of the Border Patrol agents involved and subsequently a report from the INS contract interpreter from New York City.

The Department of State dispatched personnel from the Office of Soviet Affairs and the Office of the Legal Advisor, who arrived in New Orleans Friday evening. The Assistant Commissioner for the Border Patrol and his Deputy went to New Orleans to join the Southern Regional Commissioner, to ascertain precisely what had happened, and seek further opportunity to interview the Soviet seaman away from his ship. Negotiations with the captain of the Soviet vessel and later Soviet officials in New Orleans were conducted by these State Department and INS officials.

Throughout the weekend of October 26-27, senior INS managers and myself worked with personnel on the scene and with the National Security Council, the Departments of Justice, State, Transportation and Treasury officials in Washington to plan to secure the removal of Mr. Medvid to a neutral site and to enable us to interview him and ascertain his considered decision on remaining in the United States or returning to the Soviet Union. On Monday, October 28, the Soviet authorities agreed to the transfer of Mr. Medvid from the Soviet vessel to a location where he could be questioned by U.S. officials in a neutral atmosphere.

That same afternoon, Miroslav Medvid was transferred to the U.S. Coast Guard vessel Salvia accompanied by the Soviet ship captain and a Soviet diplomatic representative. In the interview conducted by a State Department official with an INS representative present. Through an interpreter Mr. Medvid stated his decision to return to the U.S.S.R. and not to remain in the United States. However, to insure Mr. Medvid had time to reflect on his decision in a calm setting, and after consulting with COS command center, a decision was made to take him ashore for a physical examination and a night's rest.

Mr. Medvid was taken to the Naval Support Activity at Algiers, Louisiana, late evening of the 28th and subsequently received a thorough medical examination. A psychiatric examination was also initiated that evening, and was continued in the morning of the 29th. Following a night

BEST COPY AVAILABLE

of rest at the Naval facility where Mr. Medvid was alone, a second interview was conducted during mid-morning on the 29th. Mr. Medvid emphatically repeated his decision to return to the Soviet Union, adding that he desired to see his family. In both interiews, it was carefully explained to Mr. Medvid that if he feared returning to the Soviet Union, he could remain in the United States without any punishment or imprisonment here.

On Tuesday, October 29, 1985, prior to the resumption of the interviewing, a thorough review of the situation was held among U.S. officials on the scene in New Orleans and persons at the command post at the Department of State. It was determined that the Soviet sailor's mental and physical state was satisfactory and that the interview should be resumed. At the conclusion of the interview, it was the consensus of the United States team that Mr. Medvid was competent to make a decision concerning whether to remain in the United States. Following a final consultation with the Department of State and other high level U.S. officials, Mr. Medvid signed a statement denying any claim to asylum in the U.S. and requesting that he be allowed to return to the Soviet Union. After that he was returned to the M/V Marshal Konev.

Conclusion

It should be clear from my statement that there were errors in the performance of the Service officers who initially processed Mr. Medvid and decided upon his return to the Soviet vessel. Mistakes in judgement were made; existing procedures for handling potential asylum claimants were not followed.

However, the procedures and our overall system for the adjudication of asylum claims are fundamentaly sound. It is a good system. Nevertheless, we are currently conducting a very thorough review of the procedures to determine whether we should amend existing operating instructions to ensure that any person suggesting an unwillingness to return to his country will be interviewed completely to elicit the basis for a well-founded fear of persecution. I can assure that all of our Service officers are on notice today of what is expected of them in this regard.

I am proud of how the United States Government responded to this situation, once we learned of the return of Mr. Medvid. I believe that the Departments of Justice and State and others did all that we could to provide that Soviet seaman with the understanding of his options, including the clear alternative to remain here as an asylee in the United States. Extensive interview and mental and physical examinations were conducted over a 24 hour period in a setting under full U.S. control.

BEST COPY AVAILABLE

Following those interviews and examinations, it was the strong belief of all U. S. government respresentatives that the expressly stated and signed written statement of Mr. Miroslav Medvid that he had decided to return to the Soviet Union represented the true facts and proper resolution of this issue.

That completes my testimony on this matter. I will be glad to answer questions that you may have.

ATTACHMENT

208.8 PROCESSING ASYLUM REQUEST. IMMEDIATE ACTION CASES

(A) DEFINITION

(I) A REQUEST (OR IMMINENT REQUEST) FOR ASYLUM WHICH IS POLITICALLY SENSITIVE OR INVOLVES THE POSSIBILITY OF FORCIBLE REPATRIATION.

(II) ANY NATIONAL OF THE SOVIET UNION;

(III) ANY NATIONAL OF EAST GERMANY, ROMANIA, POLAND, HUNGARY, CZECHOSLOVAKIA, BULGARIA, MONGOLIA, CUBA, ALBANIA, THE PEOPLE'S REPUBLIC OF CHINA, NORTH KOREA, VIETNAM, LAOS, OR CAMBODIA, WHO IS PRESENT IN THE UNITED STATES AS PART OF AN OFFICIAL VISIT, FORMAL CULTURAL OR ATHLETIC EXCHANGE, EXCHANGE STUDENT PROGRAM OR STATE OWNED BUSINESS OR ENTERPRISE ACTIVITY, OR WHO IS IN TRANSIT THROUGH THE UNITED STATES IN SUCH CAPACITY;

(IV) ANY FOREIGN DIPLOMAT, FOREIGN CONSULAR OFFICER, OR FOREIGN OFFICIAL, REGARDLESS OF THE COUNTRY.

(V) ANY OTHER ALIEN WHO ASSERTS THERE IS A SERIOUS THREAT OF FORCIBLE REPATRIATION TO HIMSELF OR TO HIS FAMILY.

(VI) ANY REQUEST FOR ASYLUM WHICH FOR OTHER REASONS PRESENTS SPECIAL PROBLEMS CALLING FOR PROMPT ATTENTION.

(B) NOTIFICATION. WHEN IT COMES TO THE ATTENTION OF ANY SERVICE EMPLOYEE THAT A PERSON DESCRIBED IN PARAGRAPH (A) ABOVE MAY BE SEEKING ASYLUM, THE DISTRICT DIRECTOR WILL BE

BEST COPY AVAILABLE

NOTIFIED IMMEDIATELY AND FURNISHED ALL THE PERTINENT FACTS OF THE CASE, INCLUDING THE ALIEN'S IDENTITY, NATIONALITY, NEWSWORTHINESS OR PROMINENCE, AND REASON(S) GIVEN FOR REQUESTING ASYLUM. IF THE DISTRICT DIRECTOR AGREES THAT THE ASYLUM APPLICANT FALLS INTO THE IMMEDIATE ACTION CATEGORY, HE WILL EXPEDITIOUSLY RELATE THE FACTS OF THE CASE TO THE ASSOCIATE COMMISSIONER, EXAMINATIONS, CENTRAL OFFICE, OR THE CENTRAL OFFICE DUTY OFFICER, AND THE APPROPRIATE REGIONAL OFFICIAL. THE ASSOCIATE COMMISSIONER, EXAMINATIONS, OR THE CENTRAL OFFICE DUTY OFFICER WILL ALERT THE SERVICE'S PUBLIC INFORMATION OFFICER AND DEPARTMENT OF STATE'S OPERATIONS OFFICER, TELEPHONE 202-632-1512 OF THE REQUEST FOR ASYLUM.

(C) INTERVIEW OF ASYLUM APPLICANT. AFTER NOTIFYING THE ASSOCIATE COMMISSIONER, EXAMINATIONS, THE DISTRICT DIRECTOR WILL IMMEDIATELY ASSIGN AN OFFICER TO INTERVIEW THE ASYLUM APPLICANT UNDER OATH USING FORM I-589. THE APPLICANT WILL BE GIVEN AN OPPORTUNITY TO MAKE ANY STATEMENT OR PRESENT ANY EVIDENCE HE/SHE FEELS TENDS TO SUBSTANTIATE THE CLAIM OR FEAR OF PERSECUTION UPON RETURN TO HIS/HER COUNTRY OF NATIONALITY OR LAST HABITUAL RESIDENCE. THE ANSWERS GIVEN AND ANY EVIDENCE PRESENTED BY THE APPLICANT WILL BE MADE PART OF THE APPLICATION, AFTER WHICH THE APPLICANT WILL BE INSTRUCTED TO REVIEW THE FORM AND SIGN IT.

(D) SHELTER AND SUSTENANCE OF ASYLUM APPLICANT. IF IT APPEARS NECESSARY, OR THE ASYLUM APPLICANT REQUESTS IT, HE SHE WILL BE REFERRED TO THE APPROPRIATE VOLUNTARY AGENCY FOR SHELTER, SUSTENANCE, OR OTHER SIMILAR NEEDS.

(E) REQUEST FOR BHRHA ADVISORY OPINION. UPON COMPLETION OF THE INTERVIEW AND EXECUTION OF THE I-589, THE DISTRICT DIRECTOR WILL TELEPHONE ALL FACTS OF THE CASE TO THE BHRHA (202-632-2551 OR 632-2570) AND REQUEST AN ADVISORY OPINION. BHRHA WILL FURNISH ITS OPINION TO THE ASSOCIATE COMMISSIONER, EXAMINATIONS, CENTRAL OFFICE, WHO WILL RELAY IT TO THE DISTRICT DIRECTOR. UPON RECEIPT OF THE BHRHA ADVISORY OPINION, THE DISTRICT DIRECTOR WILL ADJUDICATE THE CASE.

(F) MATERIAL CHANGE OF FACTS. IF AT ANY TIME DURING THE PROCESSING OF AN IMMEDIATE ACTION CASE THERE IS A MATERIAL CHANGE IN THE FACTS OF CIRCUMSTANCES OF THE ASYLUM REQUEST,

BEST COPY AVAILABLE

THEY WILL BE FURNISHED EXPEDITIOUSLY TO THE ASSOCIATE COMMISSIONER, EXAMINATIONS, CENTRAL OFFICE.

(G) PUBLIC INFORMATION. THE DISTRICT DIRECTOR HAVING JURISDICTION OVER THE ASYLUM REQUEST AND THE PUBLIC INFORMATION OFFICER IN THE CENTRAL OFFICE AND APPROPRIATE REGION WILL BE RESPONSIBLE FOR ALL OFFICIAL STATEMENTS RELATING TO IMMEDIATE ACTION CASES. SPECIAL CARE WILL BE TAKEN TO ENSURE THAT OFFICIAL STATEMENTS ON ANY GIVEN CASE ARE CONSISTENT WITH PREVIOUS SERVICE PRONOUNCEMENTS ON SUCH CASE. ADDITIONALLY, SPECIAL CARE SHOULD BE TAKEN THAT OFFICIAL SERVICE STATEMENTS DO NOT CONVEY ANY IMPRESSION OF PREJUDGMENT IN THE CASE.

Mr. NELSON. If people had read the testimony submitted not only by INS at the last hearing on February 5 of this year, but similar testimony by the State Department, we made it very clear and spelled out point by point the chain of identification that established that Mr. Medvid was one and the same person at the initial stage and at the subsequent stage. Unfortunately, some chose not to look at the testimony or those facts.

We have consented, and I think it ought to be clear also on the record, to ask the agents involved, Agents Spurlock and Bashaw, to come here today. This is certainly unusual that journeymen officers would testify at a hearing like this, and I know it is similar at the State Department that policy members are the ones to testify.

But in order to assist you, Mr. Chairman, and the committee and Senator Humphrey, we have agreed to do that. As indicated, their counsel, Travis Douglas, is here with them, but I think we ought to make it clear that this is an unusual step on behalf of the administration to go along with the committee to try to clear these issues up once and for all.

There has been disciplinary action against these gentlemen. There is a process with their counsel of consideration of appeal. I think it is important that the committee be very aware of that.

I am sure Mr. Douglas or myself will, if necessary, make an appropriate allusion because I think the committee needs to be sensitive to those issues.

As indicated, we are pleased to be here in the open session and have this eyewitness identification chain gone through. Then, at the same time, there might well be, I am sure, other questions the committee might ask regarding the entire incident, and we look forward to the closed session.

As you indicated, Mr. Chairman, the administration has made it very clear, and it has been quite clear in the press, that the Federal Government was prepared to use force to remove Mr. Medvid from the vessel in order to have the second interview, should he not be released. That has been stated.

The purpose, as the committee has voted in closed session, is to allow us to give you the backup details on that for the committee's information.

BEST COPY AVAILABLE

So at that point, Mr. Chairman, that concludes my statement. I am very pleased to be before you and Senators Grassley, Simon and Humphrey, and I will allow the other testimony. I believe each of the agents has a statement regarding the identification issue.

Senator SIMPSON. Mr. Bashaw, did you have anything you wished to share, or your counsel?

Mr. DOUGLAS. Mr. Chairman, I think Mr. Spurlock would have a statement to make first.

Senator SIMPSON. Yes, indeed.

Mr. DOUGLAS. If I could, I do not have a prepared statement, but I would like to thank you for the opportunity of being here and finally having an opportunity for these gentlemen to present their side of this thing, which, from my point of view, has been grossly misrepresented to the committee in the past. Hopefully, they can spare any questions you have.

Mr. Spurlock has a statement he would like to read at this time.

Senator SIMPSON. Please, Mr. Spurlock.

Mr. SPURLOCK. First off, I would like to thank you for having us here and I hope that we can shed some light onto the Medvid incident.

Senator HUMPHREY. Pardon me, Mr. Spurlock.

Mr. Chairman, will you permit me to interrupt and to suggest that for purposes of consistency that we put all of our witnesses under oath, as we did in the previous hearing?

Senator SIMPSON. Perfectly appropriate.

Would you stand, please, all of you, and be sworn? All who will testify today might stand, please, and be sworn. If you would, raise your right hands and signify that you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. SPURLOCK. I do.

Mr. BASHAW. I do.

Mr. NELSON. I do.

Mr. DOUGLAS. I do.

Ambassador RIDGWAY. I do.

Mr. SELL. I do.

Mr. WORLEY. I do.

Mr. VANNETT. I do.

Senator SIMPSON. I thank you.

Let the record reflect that all of the witnesses who are on the agenda today did so acknowledge.

All right, please, Mr. Spurlock, and thank you, Senator Humphrey.

Mr. SPURLOCK. Thank you, Senator. I would like to read this short statement and then at the conclusion, if there is any questions, I hope we can answer them satisfactorily to you.

Senator SIMPSON. Would you pull that microphone up closely, Mr. Spurlock, please? Thank you.

Mr. SPURLOCK. On October 24, 1985, at about 10:20 p.m., Agent Bashaw and I took Miroslav Medvid, a deserted Soviet crewman, into custody from the New Orleans Harbor Police.

After arriving at the Border Patrol office, I showed Mr. Medvid a map of the Soviet Union out of the world atlas and he indicated that he was from the Ukraine. I then contacted Ms. Jacobs, who is the supervisor for Immigration interpreters in New York City.

BEST COPY AVAILABLE

Senator SIMPSON. I am sorry. Could you bring that forward and then place it right in front of you instead of from the side?

Mr. SPURLOCK. OK.

Senator SIMPSON. There we are.

Mr. SPURLOCK. I asked Ms. Jacobs if she could give me the name and the phone number of a Ukraine interpreter. I was informed that there was none available at that late hour. I then suggested Irene Padoch, since her name appeared on our office list of interpreters. I was told that if she was available, it would be OK to use her.

I then contacted Ms. Padoch and asked if she would be able to interpret for the deserted crewman. Ms. Padoch consented, and after advising Mr. Medvid of his rights to counsel, I asked why he had jumped ship. The reply was, for many, many reasons.

I then, through Ms. Padoch, obtained the necessary biographical data to complete the I-213, which is the arrest record for deportable aliens. And during the course of the interview, which lasted for about an hour, I asked two or three times, or more, if Mr. Medvid wanted political asylum.

Each time, the response was the same. He responded, no; I just do not want to go back to the ship. I might add at this point that the crewmen that we have encountered in the past did not want, for whatever reason, to return to their vessel.

I again asked why he had jumped ship and this time, after a short discussion with Ms. Padoch, she responded, well, if you want to put something down for your records, you can put down for moral and political reasons.

Since Medvid did not request political asylum, he was then treated as a routine deserter, processed on an I-259, and turned over to the shipping agent. At no time did Mr. Bashaw nor I contact or discuss this matter with any superior in my chain of command in the Border Patrol or with anyone in the Immigration Service or the Department of State.

The decision to detain and deport Mr. Medvid was based on specific representations to me by Ms. Padoch that Medvid was not requesting political asylum; that he just did not want to return to the ship.

Thank you, Mr. Chairman.

Senator SIMPSON. Thank you, Mr. Spurlock.

Counsel.

Mr. DOUGLAS. Senator, I believe Mr. Bashaw does not have a statement at this time. He will be available for your questions.

Senator SIMPSON. All right, thank you very much.

I think we will go on a cycle of 5 minutes, and I do know that Ambassador Rozanne Ridgway has a time problem. We will recognize that and we will accommodate that. Is 12:30 the time you must leave this chamber? We will accommodate that around the testimony and supplant, as necessary, to get to hear your remarks.

So let us go on a 5-minute questioning cycle, and then perhaps a second round.

Let me ask you, Mr. Spurlock, you have pretty well described your initial involvement. Could you describe your involvement with Miroslav Medvid from the time he was turned over to the shipping agent until he was returned to his ship?

BEST COPY AVAILABLE

Mr. SPURLOCK. Well, Senator, at the conclusion of our interview with Mr. Medvid, he was turned over to the shipping agent. We did not return him to the vessel. He was picked up at our office and transported to the vessel by the shipping agent and one of their chauffeurs.

Senator SIMPSON. So none of you were aware of what happened to him on that trip?

Mr. SPURLOCK. No, sir. After he left our office, shortly—I would say shortly after 1 a.m. on the 25th, we had no knowledge until later on that day in the afternoon of the 25th.

Senator SIMON. If my colleague would yield, what do you mean by the shipping agent?

Mr. SPURLOCK. It is the agent that is in charge of handling the ship's business while they are in port.

Senator SIMON. This is from the Soviet ship?

Mr. SPURLOCK. Yes, sir. He is an agent—he is a U.S. agent that takes care of the ship's business while it is in port in the United States. It is a U.S. company.

Senator SIMON. I see, OK. Thank you. Thank you, Mr. Chairman.

Senator SIMPSON. And apparently any foreign ship in any port in the United States has to have a shipping agent in order to assure that bills are paid and such things take place, is that not correct?

Mr. SPURLOCK. Yes, sir, that is correct.

Senator SIMPSON. That is a universal procedure, having a shipping agent.

Mr. SPURLOCK. Yes, sir.

Senator SIMPSON. Could you elaborate, please, on the interview that you had with Mr. Medvid and the Ukrainian interpreter, Irene Padoch? Would you please describe any difficulties that you had, perhaps, in understanding the interpreter or making yourself understood to her? That was an issue from our first hearing.

Mr. SPURLOCK. Right from the beginning, Ms. Padoch said that we were having some problem with the telephone, and I do not know whether it was problems with the telephone or not, but evidently she was having problems understanding me.

And I guess I do have a slight southern accent, but also Ms. Padoch has a very heavy accent and we were having some problems understanding each other. But through repeating our questions back and forth, we managed to get enough information to process Mr. Medvid.

I do not think that—the telephone lines were not that bad. I think it was more her understanding me and my understanding her. Now, I cannot say whether or not Mr. Medvid had any problems understanding Ms. Padoch or not since I do not speak Russian or Ukraine.

Senator SIMPSON. In testimony before this subcommittee on November 5 1985, Irene Padoch stated, "I asked him," "him" being Medvid, "do you like to stay here and are you asking for political asylum?" This is her testimony now that I am quoting: "He, without any hesitation, stated yes, and I told this to the officer and the officer again asked me, 'so he stated yes,' and I told him 'yes.'"

Do you recall the interview proceeding in that manner? Did Medvid request political asylum?

BEST COPY AVAILABLE

Mr. SPURLOCK. Senator, the way that I recall it happening was that each time that I asked if Mr. Medvid wanted political asylum, the answer came back, "No; I just do not want to return to the ship."

I might also add that we are not required to ask a person if they would like asylum. That is their choice and their responsibility to ask if they desire it.

Senator SIMPSON. But in this instance, he was asked personally?

Mr. SPURLOCK. Yes, sir, I did ask him; yes, sir.

Senator SIMPSON. Which is not usual procedure?

Mr. SPURLOCK. No, sir, it is not.

Senator SIMPSON. In your sworn statement to an INS special agent, you were asked, what did you base your decision on when you decided to return the subject to the vessel. Your response was—this was a response in a sworn statement on October 27, 1985—you said, "At no time did the subject offer any specific reasons for persecution, but rather demonstrated a typical behavior associated with a ship-jumper."

Why, then, did you note in your report that Medvid did not wish to return because of political and moral reasons?

Mr. SPURLOCK. As I stated earlier, after, and only after, I had asked several times if he wanted political asylum and why he had jumped ship did the response come back, and it sounded to me more like a quote or a statement from Ms. Padoch rather than from the crewman.

I have no way of knowing exactly what his answers were, but they did have a brief discussion prior to her responding in that fashion.

Senator SIMPSON. And then you put down political and moral——

Mr. SPURLOCK. I put it down just like she said it, yes, sir.

Senator SIMPSON. She said to do that?

Mr. SPURLOCK. That was the response that she gave.

Senator SIMPSON. Senator Grassley.

Senator GRASSLEY. I would like to say that I am going to be asking detailed information from the Border Patrol agents because we have seen conflicting information coming from a variety of sources and I am merely trying to obtain the truth more directly from those involved. So my questions would be both to Mr. Spurlock and Mr. Bashaw.

To your knowledge, did any employee or officer of the Border Patrol, the Harbor Patrol, the INS, the New Orleans police or any Federal, State or local organization phone the State Department, the Washington office of the INS or any other Washington governmental official prior to the return of Medvid to the *Marshal Konev*, and if so, I would like to have you give me the details.

Mr. SPURLOCK. No, sir; as I have previously stated, we did not. We have no knowledge of what transpired at the Harbor Police or the New Orleans police department, but I myself nor Mr. Bashaw contacted any INS official or the State Department. We acted, as I stated before, on the information furnished us by Ms. Padoch.

Senator GRASSLEY. Mr. Bashaw?

Mr. BASHAW. Just to reiterate what Mr. Spurlock said, yes.

BEST COPY AVAILABLE

Senator GRASSLEY. So you have no knowledge of any phone call, then?

Mr. SPURLOCK. No, sir.

Senator GRASSLEY. Did any Federal Government officer or employee communicate in any way by telephone, telex or otherwise, with any person in New Orleans connected with the Medvid case prior to the return of Medvid to the *Marshal Konev*?

Mr. SPURLOCK. No, sir, not to my knowledge.

Mr. BASHAW. No.

Senator GRASSLEY. Where did you get the name of Irene Padoch, the interpreter?

Mr. SPURLOCK. Sir, we have a list of interpreters in our office kept on file and we are required to contact the supervisor to get an authorization before, but her name was listed on the list of qualified interpreters.

Senator GRASSLEY. Is there any truth to the report that Medvid was sent back to the *Marshal Konev* because, after informing Washington of the result of the Padoch interview, you were told, and I use some quotes that we have heard, "send him back anyway," or words to that effect?

Mr. SPURLOCK. Absolutely not, no.

Senator GRASSLEY. Are you personally acquainted with Joe Wyman of Belle Chasse, LA?

Mr. BASHAW. I am not personally acquainted with him, no.

Mr. SPURLOCK. I met Mr. Wyman on one occasion.

Senator GRASSLEY. My next question was how frequently you have talked with Mr. Wyman since October 24, 1985, just that once?

Mr. SPURLOCK. On one occasion, yes, sir.

Senator GRASSLEY. Have you talked with Mr. Wyman in the last week?

Mr. SPURLOCK. No, sir.

Senator GRASSLEY. Have you ever made representations to Mr. Wyman with respect to any discussion with the State Department prior to the return of Mr. Medvid to the ship?

Mr. SPURLOCK. No, sir, I could not have made a statement like that because there was no contact with the State Department.

Senator GRASSLEY. Did you engage in any plea bargaining or similar types of negotiating sessions with the INS or the Border Patrol?

Mr. SPURLOCK. No, absolutely not, sir.

Senator GRASSLEY. Have you ever been instructed not to discuss any aspect of the Medvid case?

Mr. SPURLOCK. Only with the press. [Laughter.]

Mr. DOUGLAS. That, by the way, was on my advice and not from INS point of view.

Senator GRASSLEY. So you were never instructed to not discuss any aspect of the Medvid case, except to not discuss it with the press?

Mr. SPURLOCK. That is correct.

Senator GRASSLEY. In other words, you could discuss the case with anybody else you wanted to?

Mr. SPURLOCK. I assume so, yes, sir.

59-577 O - 86 - 4

BEST COPY AVAILABLE

Senator GRASSLEY. On Friday, October 25, 1985, at what time did you board the ship *Marshal Konev*?

Mr. SPURLOCK. I would have to check, sir. It was approximately 3 p.m.

Senator GRASSLEY. Who accompanied you?

Mr. SPURLOCK. Deputy Chief Worley and Agent Vannett.

Senator GRASSLEY. And what happened?

Mr. SPURLOCK. Originally, we went aboard and went to the captain's quarters. I identified Mr. Medvid from the picture in his passport, and after a short discussion we went down to sickbay where Mr. Medvid was. I identified him in the presence of Mr. Worley, and, I believe, the captain of the vessel and some more people were there, but primarily Mr. Worley and myself were in the sickbay and I identified Medvid to Mr. Worley.

Senator GRASSLEY. Mr. Chairman, I think that my next line of questioning will take some time, so I should——

Senator SIMPSON. Your 5 minutes has expired and a little more, and we will go to Senator Humphrey now and we will get another cycle.

Senator Humphrey.

[Pause.]

Senator SIMPSON. Did you wish to go——

Senator HUMPHREY. Yes, when Mr. Worley is finished coaching the witness, we will proceed.

Senator SIMPSON. I am sorry. That is Mr. Travis Douglas.

Senator HUMPHREY. I beg your pardon.

Senator SIMPSON. It would not be the first time that ever happened in this hearing room.

Senator HUMPHREY. May I ask who Mr. Douglas is?

Senator SIMPSON. He is the counsel of these two gentlemen.

Mr. DOUGLAS. Senator, I am retained counsel for these two gentlemen, representing them primarily in the disciplinary actions proposed against them by the INS. I have accompanied them here today at their request and in that context.

Senator HUMPHREY. Fine. Are they paying your bill? Whom do you work for?

Mr. DOUGLAS. I work for these two gentlemen.

Senator HUMPHREY. They are personally paying your bill?

Mr. DOUGLAS. Yes, sir. I did convince INS to pay my way up here this trip.

Senator HUMPHREY. Mr. Spurlock, you said something about the use of interpreters. Will you tell us again how you came to use Ms. Padoch just very briefly?

Mr. SPURLOCK. Yes, sir. I called Ms. Jacobs in New York City and——

Senator HUMPHREY. Who is that?

Mr. SPURLOCK. She is a supervisor for the interpreters in the New York City area for the Immigration Service.

Senator HUMPHREY. She is an INS employee?

Mr. SPURLOCK. I assume, sir; I am really not sure. I know that she is the supervisor for the interpreters, however, and it is our policy to contact her so that she can authorize the use of the various interpreters for pay purposes, I would assume. I am not sure of that either.

BEST COPY AVAILABLE

But after I called Ms. Jacobs, there was no—she informed me that there was no Ukraine interpreter available. And as I was talking to her, I was looking through the list of the interpreters that we keep in our office and I came upon Ms. Padoch's name and then that is when I asked her if I could use Ms. Padoch.

Senator HUMPHREY. And that was the last contact you had with her?

Mr. SPURLOCK. With Ms. Jacobs?

Senator HUMPHREY. Yes.

Mr. SPURLOCK. Yes, it was, sir.

Senator HUMPHREY. I want to follow up on a question that Senator Grassley asked. There have been reports floating around that you told someone that you had been told by authorities, supervisors, or someone superior to you in rank that you should see to it that Medvid was returned to the ship.

Those reports are completely false, is that correct? You never——

Mr. SPURLOCK. Yes, sir, they are false. We acted only on the information that we were supplied by Ms. Padoch.

Senator HUMPHREY. You had never spoken with anyone directly, in writing or by telephone or in anyway, whom you told that you were instructed by superior authorities to return Medvid, irrespective?

Mr. SPURLOCK. No, sir.

Senator HUMPHREY. You never spoke to anyone or had any communications of that nature?

Mr. SPURLOCK. I had no reason to, sir, because I did not have any such conversation.

Senator HUMPHREY. What is the status of the disciplinary action?

Mr. SPURLOCK. Well, I think the Commissioner could answer that, but I will go ahead and answer it. We are to start our suspension on March 16. I received a suspension for 90 days; Mr. Bashaw, 45 days; and a reduction in grade from GS–9 to GS–7. And we cannot file our appeal until after the suspension starts; it would be on March 17.

Senator HUMPHREY. Well, as of this juncture, do you feel that you have been treated fairly?

Mr. SPURLOCK. No, sir.

Senator HUMPHREY. You do not, and why do you not feel that you have been treated fairly?

Mr. SPURLOCK. Because with the knowledge that we had at the time, I feel that we acted properly.

Senator HUMPHREY. Will you describe for us the scene as it unfolded? When did you first lay eyes on Mr. Medvid? And just tell us how things happened after that.

Mr. SPURLOCK. Well, as I said in my statement, it was shortly after 10 p.m. on October 24; we received a call from our dispatcher that they had an alien in custody that could not speak English and requested that we go over there.

Agent Bashaw and I went over there and talked to, or tried to talk to Mr. Medvid and it was of no avail. So we took him into custody and transported him back to our Border Patrol station which is across the Mississippi River from the Harbor Police office.

BEST COPY AVAILABLE

And at that point, like I stated, I showed Mr. Medvid a map out of the atlas of the Soviet Union and he picked out a town in the Ukraine and pointed to himself with some pride that that was where he was from.

And after that, that is when I started to try to get in touch with the interpreters because it was virtually impossible to communicate with the man.

Senator HUMPHREY. My time is up. Thank you.

Senator SIMPSON. Let me at this time ask this group to relinquish the table so that we might hear the testimony of the State Department witnesses, because that is a very critical issue and we do have a time problem with Ambassador Ridgway.

We will come back to you. You were prepared, I think, to stay, I recall, counsel and Commissioner, and I appreciate it.

So at this time our next witness will be Assistant Secretary of State for European and Canadian Affairs, Rozanne L. Ridgway, who is accompanied by Louis D. Sell, a State Department officer. Mr. Sell is the Deputy Director for Bilateral Political Relations of the Office of Soviet Union Affairs, the State Department officer who was dispatched to New Orleans to conduct the second and third interviews with Miroslav Medvid.

Ambassador Ridgway, please.

TESTIMONY OF ROZANNE L. RIDGWAY, ASSISTANT SECRETARY OF STATE FOR EUROPEAN AND CANADIAN AFFAIRS; ACCOMPANIED BY LOUIS SELL, DEPUTY DIRECTOR FOR BILATERAL POLITICAL RELATIONS, OFFICE OF SOVIET UNION AFFAIRS, DEPARTMENT OF STATE

Ambassador RIDGWAY. Thank you very much, Mr. Chairman. I appreciate the special effort you have made. I think I owe you an explanation. This week is Women's History Week and I am the featured speaker at the Department of State at a lunchtime program.

I would be happy to return after that program, but I, looking around, did not see too many people who could have taken my place as the Women's History Week speaker.

Senator SIMPSON. I think not, and I appreciate your being present.

Ambassador RIDGWAY. Mr. Chairman, the case of Soviet seaman Miroslav Medvid has generated considerable interest in Congress and the press and among the American people, as rightly it should. This is because it touches on the very fundamental question of life and liberty for a man who, on the basis of his extraordinary behavior the evening of October 24, we had every reason to believe was seeking political asylum in this country.

I can assure you that when officials in Washington were informed about the original error which led to seaman Medvid being returned to his Soviet ship, we took extraordinary measures to ensure that he was removed from the ship to our custody and given every opportunity to indicate whether he wished to remain here.

Among the many rumors and allegations which have developed around this case, prominent attention has been given to two mutually inconsistent conspiracy theories.

Senator SIMPSON. Ambassador Ridgway, could you pull that a little closer to you? Thank you very much.

Ambassador RIDGWAY. The first alleges that the administration conspired with the Soviets to return seaman Medvid to the Soviets in order to avoid an incident prior to the November summit.

The second theory holds that we were duped by the Soviets and that the man we actually interviewed was a substitute. Both allegations are completely false. From the start, our primary concern was the welfare of seaman Medvid. Considerations about Geneva or the possible impact of the case on United States-Soviet relations played no role in our handling of the case.

To assert otherwise is not only mischievous, but flatly wrong. There is also no doubt that the individual we interviewed on October 28 and 29 was the same individual interviewed by the INS on October 24.

I do not intend to give a lengthy statement or repeat testimony already given. I incorporate by reference the testimony given by my deputy, William M. Woessner, on November 5, 1985, and February 5, 1986, before this subcommittee, my own testimony on November 7, 1985, before the House Subcommittee on Europe and the Middle East, and an addendum I am submitting for the record with my testimony.

However, I do want to set the record straight concerning sensational allegations that the Soviets pulled a switch. Those who make them ignore, or perhaps do not have, all the facts.

Two INS officers interviewed seaman Medvid on shore on October 24 and took his photograph. One of those INS officers was with the INS party which boarded the *M.V. Konev* on October 25 and he identified the man he saw in the sickbay as the same man he interviewed on shore the night before.

Present at this October 25 encounter with seaman Medvid, which lasted several hours, was another INS officer who subsequently identified seaman Medvid on October 26 in the presence of the Department of State representative.

The INS officer present during the October 25 and 26 meetings identified Medvid not only by his physical appearance, but by a mark on his heel which he had observed on both occasions.

The same Department of State Representative who saw seaman Medvid on October 26 also interviewed seaman Medvid on the Coast Guard Cutter *Salvia* on October 28 and at the naval shore facility on October 29.

Alleged height and weight discrepancies from the preliminary physical examination by the Navy doctor aboard the *M.V. Konev* on October 26 ignore the fact that the man we interviewed on October 28 and 29 fit the INS description of October 24, matched the photograph taken by INS on October 24, matched the photograph in seaman Medvid's Soviet passport, and was the same man seen in the sickbay on October 25.

Purported photograph evidence of a switch turns out to be poor-quality photos taken surreptitiously by a military officer which, in fact, closely resemble the individual originally photographed by INS.

Allegations that Medvid did not speak Russian are false. They are apparently based on statements by individuals who do not

speak Russian. A reported handwriting analysis which we have never seen was apparently based on a comparison of printing done in the Roman alphabet, which seaman Medvid did not know well, and a Cyrillic signature.

To repeat, the allegations are without foundation. There is no doubt that the man we interviewed was seaman Medvid.

Mr. Chairman, I am now prepared to respond to questions. I am accompanied by Mr. Louis Sell, of the Office of Soviet Union Affairs, who has firsthand information concerning the events which took place in New Orleans. He is prepared to assist me in responding to questions of fact.

Thank you very much.

Senator SIMPSON. Thank you very much.

Let me ask you these things in my 5 minutes. Could you describe your involvement in the Medvid incident from the beginning to the end, particularly the two interviews which you personally conducted with Medvid, Mr. Sell, and also the issue of the Border Patrol initially interviewing Mr. Medvid?

The Border Patrol took his fingerprints. When the State Department and INS officials made their identification of Medvid on the *Marshal Konev*, they used eyewitness identification and photographic identification, but did not check or reaffirm the fingerprints to see if they matched.

I would inquire why that was not done and your participation, please, in that.

Mr. SELL. Mr. Chairman, I was—my participation began almost from the moment we first received a phone call, which was approximately 3:30 in the afternoon on Friday, the 25th. Shortly after that, I was dispatched to New Orleans. Thanks to some help from my wife, who put together a change of clothes and drove me to the airport, I was on a plane to New Orleans by 6:30.

I first boarded the Soviet ship at about 10:30 Friday night, local time. I first saw Mr. Medvid on Saturday at about 3:00 when we conducted a short interview with him in the presence of the Navy doctor and an INS officer.

Subsequently, I was with Mr. Medvid when we took him off the ship, off the Soviet ship, onto the Coast Guard Cutter *Salvia*. I chaired the interview with Mr. Medvid which occurred on the *Salvia*. I was with him when we took him off the ship, accompanied him to the naval shore facility.

I chaired the interviews we had with him on the following day, on Tuesday, the 29th, and, in general, spent almost every waking moment with him for the 24-odd hours he was in our custody.

I can speak at more length, if you wish, about any one of those interviews. To answer your special question about the fingerprints, I would answer in two—there are two chief reasons.

First, it was unnecessary to fingerprint him. The question never arose. No one suggested or asked for the use of fingerprints. It was unnecessary because we had clear eyewitness and photographic evidence that the individual who was before us was indeed Mr. Medvid.

The second reason we did not fingerprint—or to answer another question that came up, why we did not take his picture involved the atmosphere we wished to establish. Medvid had been through

BEST COPY AVAILABLE

an experience which was not calculated to build his confidence in the U.S. Government. We were trying to rebuild that.

That was one reason why we tried to establish kind of an informal atmosphere for the initial interview on the *Salvia*, and to have, right off the bat, or indeed at any time, really, fingerprinted him or photographed him, given him a mug shot, would have established an atmosphere which could have led him to believe he was being treated like some kind of a criminal.

And we tried to make it very clear both explicitly and through our treatment of him that he was not.

Senator SIMPSON. I understand you are very fluent in the Russian language. Is that correct?

Mr. SELL. I am very hesitant to use the word "fluent," sir. The State Department has a 5-point rating system. No. 5 is the top, and that is considered a native speaker. I am rated at 4 in both speaking and reading. I feel confident in doing whatever I need to do in Russian; I have used it a lot.

Senator SIMPSON. I will come back to that, but you spoke to him in Russian often, did you not?

Mr. SELL. Yes, sir. Whenever I spoke to him, it was in Russian, with the exception of the formal interview where I always spoke in English and used an interpreter as a matter of procedure.

Senator SIMPSON. Senator Humphrey.

Senator HUMPHREY. Ambassador Ridgway, how did the State Department first learn of the situation?

Ambassador RIDGWAY. believe we had a telephone call.

Senator HUMPHREY. I From whom?

Ambassador RIDGWAY. From the Department of Justice, INS.

Senator HUMPHREY. And how did they first learn of the problem?

Ambassador RIDGWAY. I do not know.

Senator HUMPHREY. Well, who was handling the decisionmaking in Washington once Washington became notified?

Ambassador RIDGWAY. There was, as I am sure you can appreciate, an extended group of people because there are a number of Departments involved—the Department of State; the Department of Justice; as the case proceeded, the National Security Council.

And there was throughout the bureaucracies of those three, I am sure, myriad people whose names I do not know, with the telephones active among all the Departments trying to make sure all the right people were in touch, make sure the right people were informed.

I can only speak to the Department of State, where the Deputy Secretary, John Whitehead, was commissioned for oversight for this and was assisted on an operational basis by my deputy, Mark Palmer, the Deputy Assistant Secretary of State for European and Canadian Affairs.

Senator HUMPHREY. All right, so Secretary Whitehead was the person in charge for the State Department. Did one Executive agency have the lead in this effort?

Ambassador RIDGWAY. We were all working together. I do not mean to make light of your question at all, Senator. I am sure you know Washington well enough that there is always a discussion as to who has the lead or who does not.

BEST COPY AVAILABLE

I would say that depending upon the particular aspect of the case, the lead changed, and to the extent that a decision or a problem incorporated both the diplomatic and the legal, we worked together. And, of course, throughout we had the National Security Council involved.

I would like to say that the Department of State had the lead, but I just cannot say that exclusively. It changed, according to the question.

Senator HUMPHREY. Okay. You say in your statement that "we had every reason to believe he was seeking political asylum."

Ambassador RIDGWAY. Yes.

Senator HUMPHREY. "When officials in Washington were informed, we took extraordinary measures." For whom are you speaking there? Who is "we?"

Ambassador RIDGWAY. I have testified myself on the House side in exactly that fashion, and we, the Department of State—certainly, that was the conclusion we drew. I would not purport to speak to what conclusions others drew.

But when we heard the facts of the case, we believed then, as we believe now, that Mr. Medvid in his original decision to leave the ship, to jump the ship, was expressing a desire for freedom. We have never thought otherwise.

Senator HUMPHREY. "From the start, our primary concern was the welfare of Seaman Medvid." Who are we referring to here when you say "our primary concern?"

Ambassador RIDGWAY. Well, again, one likes to use the word "exclusive," but we do not live in that kind of a world. We wanted to make sure of a number of things. For example, all of the actions taken that Mr. Sell has just referred to, because he was the person involved, of dispatching him to New Orleans, of getting tickets, getting him down there, indicate that we wanted to take every step to get someone on-site and begin to get Mr. Medvid off that ship because we believed, as we say, that he was seeking freedom.

But in doing that kind of thing, one does also take account of the laws, the agreements, things of that sort, and so they have to be taken into account. But our first actions and I think our primary concern—I think that is an accurate description, Senator—were always for Seaman Medvid.

Senator HUMPHREY. You state that "considerations about Geneva or possible impact on U.S.-Soviet relations played no role in the handling of this case." Were such considerations discussed?

Ambassador RIDGWAY. They were never even discussed, Senator.

Senator HUMPHREY. Never came up?

Ambassador RIDGWAY. They never came up.

Senator HUMPHREY. In your circle?

Ambassador RIDGWAY. Well, yes. I speak only for the circle, and I would put in my circle the Department of State. It was just never raised.

Senator HUMPHREY. Well, were you always in the company of Secretary Whitehead while this matter was being discussed?

Ambassador RIDGWAY. No, I was not.

Senator HUMPHREY. How were the State Department's wishes transmitted to the field?

BEST COPY AVAILABLE

Ambassador RIDGWAY. Could you help me a little bit with that, Senator, as to which wishes, because we asked Mr. Sell to proceed expeditiously and then when he arrived, he telephoned to say that he had arrived and we talked back and forth on the telephone to him?

Senator HUMPHREY. All right, so there were discussions between State Department officials and Mr. Sell, who was on the scene?

Ambassador RIDGWAY. Yes, and then we asked others to go to New Orleans. There was an officer from the Office of the Legal Adviser who went, another Soviet specialist who went, but it was by telephone with that group in New Orleans.

Senator HUMPHREY. OK, thank you.

Senator SIMPSON. If I might, and not running this time against any of us, if you, Mr. Sell, could briefly describe your involvement a little more in detail from the beginning, I think that would benefit Senator Humphrey and myself, particularly to the end of your personal involvement, particularly the two interviews which you conducted with Medvid, and take 5 minutes or maybe 10 to do that, if you could.

Mr. SELL. Thank you. My first meeting with Medvid, as I said, was on Saturday afternoon, the 26th, at about 3:00. The meeting itself, I should stress—the agreement to the meeting was negotiated in Washington. The Soviets agreed to it in Washington through discussions in Washington.

My involvement was in the meeting itself and the interview. I went to the sickbay where Medvid was in the company of a naval doctor, an INS officer who had been with him the day before, and also in the company of the——

Senator SIMPSON. Could you give his name, please, for the record?

Mr. SELL. Mr. Vannett; and the Soviet consular officers and the ship's captain. When we got to the sick bay, Medvid was there lying in bed and the ship's doctor was already in the room.

I spoke to Medvid briefly to tell him who I was and to make it clear to him and to the Soviets that this was not the interview that we were seeking; that that interview had to take place off the ship, off the *Konev*, but this meeting was to ascertain his health, first. We wanted to make sure that he did not need to be taken off that ship for medical treatment immediately, which we were prepared to do if he needed it.

We wanted to make sure who he was and just his condition. I had with me when I went down there the report that the two INS officers who had interviewed him the evening before—or, I am sorry, on the 24th—had made, and attached to that was a picture, a frontal picture, of Mr. Medvid.

I compared that picture that was taken of Mr. Medvid on the evening of the 24th with the individual lying before me. I asked for his passport, which, as is customary, the ship's captain keeps. It was brought to us.

I looked at the passport carefully, compared the picture in the passport with the picture the INS had taken; looked at the description and ascertained that the individual before us was indeed Miroslav Medvid.

BEST COPY AVAILABLE

At that point, then, the doctor conducted a physical exam. You have already had a—the doctor has already testified about what he did, and Mr. Vannett is here so I do not need to—he also looked at the documents I did, but I am sure he will be able to tell you about that.

That meeting lasted about an hour, I think. We then withdrew. The Soviet consular officer said that is all—that is the only interview you have. And we made it clear to him that was not going to be the case.

Further negotiations were conducted in Washington. The proceedings were delayed about a day while Hurricane Juan passed through New Orleans, and on Monday, the 28th, the Soviets agreed in Washington, as a result of negotiations going on in Washington, that we could take off Medvid and interview him on board the Coast Guard Cutter *Salvia*, which was moored a couple hundred yards astern of the *Konev*.

We did that at about 4:00. He left the *Konev*, boarded the *Salvia*, and after a very few brief preliminaries we began the interview in the ward room of the *Salvia*. I chaired that interview.

Also present from the U.S. side were Mr. Brandemuehl from INS, our interpreter, and the doctor. For the Soviet side, there was the two Soviet consular representatives, the ship's captain, and the ship's doctor.

Shortly after—much of this is in the public record already, but shortly after—indeed, all of it is. I established the groundrules for the interview, made a short statement, allowed the Soviet representative to make a short statement.

Very shortly after we began talking to Medvid, he said he felt sick. We allowed him to go out in the fresh air; he still felt nauseous. The doctor examined him, decided he needed some rest. He rested about half an hour or so. The doctor and he agreed that he could continue the interview, so we reconvened in the ward room of the *Salvia*, continued through the interview.

I questioned him extensively about what had happened, about his reasons for the actions, and finally I asked him—I made it clear to him he was not under any detention; that if he wished to, he could remain in the United States; made it clear that if he wished to remain, he would not be returned to the Soviet ship. He could leave immediately in our company and all Soviets present would leave immediately for their ship.

I asked him if he wished to remain in this country. He waited. He had a glass of ice water in front of him. He sipped that glass until he finished it and then replied, there is a saying that there are many places in the world, but home is best.

At that point, under instructions, I adjourned the interview and went to the bridge of the *Salvia* and reported on everything that had happened, together with another State Department officer, to Washington.

We waited for Washington's response, which came back in about 45 minutes or so, and the response was that in view of his bout of illness and the ambiguous nature of the reply I have just described, positive but elliptical, that he should be taken off the *Salvia* and given a good night's sleep at a naval facility on shore and interviewed again the next day.

BEST COPY AVAILABLE

When I went back and informed the Soviets of this decision, they objected very strenuously, accused us of bad faith and a lot of other things, insisted on the right to call their embassy in Washington, which we gave them. So the Soviet consular officer, since he could not call his embassy from the bridge of the *Salvia* as we could Washington, took a launch to the shore, telephoned his embassy, came back. All this took some time, approximately an hour.

He came back and said, our response is that we do not agree to this; we insist that we return to the ship; Mr. Medvid has told you he wants to go back and that should be enough.

We repaired to the bridge of the *Salvia.* I again consulted with Washington. Their response was we should take him off. We would allow the Soviets to accompany him, if they wished, but if they continued to object, we were to take him off alone.

At this point, I informed the Soviets of this decision. I might add that we did so making it clear that we were prepared to separate them by force. When I informed the Soviets of this decision, the Soviets were still in the ward room with Medvid and always in the company of Americans, including our interpreter.

I had standing behind me eight, I believe it was, uniformed officers of the tactical squad of the Border Patrol carrying night sticks. They stood behind me in clear view of the Soviets. Although at no time did I threaten to use them, it was clear what we were saying to them.

When I told them that we were prepared to separate them from Mr. Medvid and take him off alone, but we would allow them to accompany, they said—they, again, continued to protest strenuously, but agreed to go with us to the shore.

We traveled to the shore on board a Coast Guard launch, drove to the naval facility. We arrived there approximately 10:30 Monday night. Dr. Caruthers examined Mr. Medvid in the BOQ.

We established Medvid in a suite in the BOQ, established the Soviets in another separate suite, established the groundrules; that is, that the Soviets could have one person, and no more than that, in the adjoining room to Mr. Medvid. All the other Soviets had to remain in a separate suite.

Dr. Caruthers did a medical examination of Medvid. The psychiatrist did a brief interview of Medvid. Medvid was very excited and he watched television until late in the evening. I finally had to pull the plug on the TV and we got him to bed.

He woke up the next morning around 8:00. We gave him breakfast, and the psychiatrist conducted a very long interview with him; it lasted a couple hours. We then reconvened for a second interview with Mr. Medvid, which was conducted in the sitting room of the suite with all of the same participants.

I ran through very much the same questions. At the conclusion of that interview, Mr. Medvid said again that he wished to return to the Soviet Union. We repaired to another room, telephoned Washington, reported to Washington the results of this interview.

We waited about 2 hours or so; it could be a little longer. We got word of the decision that at this point we should allow—we should reconvene the interview, seek to get Medvid to sign a statement that he wished to return and was doing so voluntarily—the com-

BEST COPY AVAILABLE

mittee has been furnished a copy of that statement—and to let him go at that point.

We reconvened. The Soviet consular officers raised some objections to the first draft of the statement. Mr. Medvid raised more objections. There were some negotiations, in the course of which certain changes were made to the statement.

We reached agreement on the statement. He signed it, I signed it, the consular officer signed it. At about 6:00, we left the naval shore facility, drove to the banks, took him on a Coast Guard launch, again, in my company, our interpreter and two or three uniformed Border Patrol officers; took him to the *Konev* and left him at the gangplank, and he walked up in the company of the two Soviet consular officers, the captain, and the doctor.

Senator SIMPSON. Thank you very much.

During this entire time, you spoke to Mr. Medvid in Russian whenever you spoke with him?

Mr. SELL. Yes, sir; when I spoke to Medvid, I spoke in Russian.

Senator SIMPSON. And whatever interviewing you did other than conversation was also done in Russian, specifically the interview in the infirmary?

Mr. SELL. In the infirmary, I spoke to Mr. Medvid in Russian. That was on Saturday afternoon before the arrival of our official interpreter.

Senator SIMPSON. Why was Russian rather than Ukrainian the language of the interview?

Mr. SELL. On Saturday?

Senator SIMPSON. At any time.

Mr. SELL. That was the standard—well, first, when I spoke to Medvid on Saturday, I spoke to him in Russian. I do not speak Ukrainian. It is standard practice that these kinds of interviews are conducted in Russian and in English, the official languages of the two governments involved.

Mr. Medvid at all times, including the first moment he spoke to me before I had said a word to him, spoke in Russian. He always spoke in Russian to the other Soviets present, including to his captain, who was a Ukrainian by nationality.

Senator SIMPSON. The captain of the ship?

Mr. SELL. The captain of the ship, yes, sir.

Senator SIMPSON. Was Ukrainian?

Mr. SELL. By nationality.

Senator SIMPSON. And Medvid spoke to him in Russian?

Mr. SELL. Yes, sir; had Mr. Medvid—as is a matter of record, our official interpreter was fluent in both Ukrainian and Russian.

Senator SIMPSON. Who was the official interpreter, the name of the official interpreter who spoke both Russian and Ukrainian?

Ambassador RIDGWAY. May I look that up, Mr. Simpson, because——

Senator SIMPSON. If you would, just enter it in the record; that is fine.

Mr. SELL. I can tell you. His name was Mr. Ross Lavrov.

Senator SIMPSON. Ross Larov?

Mr. SELL. Lavrov.

Senator SIMPSON. Did Mr. Medvid at any time ask for a Ukrainian translator?

BEST COPY AVAILABLE

Mr. SELL. No, sir, he did not. He never asked to—he never asked for a Ukrainian interpreter. He never indicated that he wanted to do the interviews or any other conversations in Ukrainian. Had he asked for the interpretation to be done in Ukrainian, we were prepared to do that.

Senator SIMPSON. You were prepared to do that because you had an interpreter present who understood fully Russian and Ukrainian?

Mr. SELL. Yes, sir.

Senator SIMPSON. Did he have any difficulty at any time understanding the Russian translation or the translation of the——

Mr. SELL. None whatsoever. His Russian was completely fluent. I have talked about this issue with the interpreter and I have since reconfirmed it. The interpreter confirms my judgment that Russian was his primary language, the language he preferred to use in all conversations both with us and with other Soviets.

Senator SIMPSON. Just briefly, could you describe to the subcommittee the chain of identification. You have done that, but, again, just briefly, please describe the chain of identification of Medvid and whether you were personally confident that the man you interviewed was the same man who appeared in the Border Patrol photograph?

Mr. SELL. To answer the second question first, sir, yes, I am absolutely confident that there is no doubt about the identity of Mr. Medvid. I will be happy to run through again the chain of evidence that I used first on the 25th, that being the report which the INS officers who originally interviewed Mr. Medvid on the shore the evening of the 24th had prepared.

I had a copy of that report, to which was attached a color frontal photo of Mr. Medvid. I compared that photo and the description on the report with the individual lying in bed before me.

I called for Mr. Medvid's passport and I compared the passport photo, the description in the passport, with the INS documents I have just described, with the individual. They were all identical; the pictures, the descriptions all matched.

And in addition, there was also the INS officer present who had been with Mr. Medvid the previous day, who confirmed that it was indeed the man he observed in the sick bay the day before.

If I might, there are a couple of things I would like to add on this question of identity.

Senator SIMPSON. If you would, and then we will go to Senator Humphrey and I will give him the equal time that I am taking.

Mr. SELL. These are not questions of fact, as I have just described, but logical or implausibilities with the argument that Medvid could have been switched. The first, and I think most important one, is if the Soviets had indeed pulled a switch, which they did not—if they had, they relied on a man who did very poorly from their point of view.

If you believe that they switched Mr. Medvid, then you also have to believe that the false Medvid went on the *Salvia* as I have described, got sick, and answered a question which—the key question, he answered that positively but elliptically.

In other words, he responded in a fashion which was calculated to raise legitimate doubts about what he had said. And indeed it

BEST COPY AVAILABLE

was his behavior, as I have described it, which led us to take him off the *Salvia*.

If the Soviets had pulled a switch, they would have hardly gotten a man who would have done that. The second one concerns identity. I do not personally believe that every Soviet seaman travels with a twin brother, so that they would have had to have disguised this false Medvid in some fashion rather effectively and in a fashion which could not have stood up to the examination which the Soviets knew was coming, both based on photos, a medical exam, and my own 24-hour, close contact with him, including when he was washing and shaving.

Finally, there is the question of the cut. If you believe the Soviets pulled a switch on Mr. Medvid, you have a hard time explaining the cut on his wrist. The most likely time to have done the switch would have been between the time he was originally returned to the *Konev* and when the INS officers went back on board.

If that is the case and the Soviets did switch him, why did they present us with a man who had a cut wrist—again, behavior calculated to raise our suspicions about the individual before us?

Senator SIMPSON. Senator Humphrey. Take 10 minutes, Gordon, if you wish.

Senator HUMPHREY. Thank you.

Mr. Sell, to how many phone calls were you a party in this whole operation on the *Salvia* and later at the naval station?

Mr. SELL. Senator, I could not give a precise answer to that question. I was——

Senator HUMPHREY. An estimate will be fine.

Mr. SELL. There was no phone on the ship, so every phone call required getting on a launch and going to the shore, making a phone call either from the headquarters of a launch company at the dock or traveling to the border patrol headquarters about 15 minutes away and phoning Washington.

I did that many times each day, and I would guess very—I mean, I would not be surprised if it was 20 to 25 phone calls.

Senator HUMPHREY. Were you not able to communicate from the bridge of the *Salvia*?

Mr. SELL. From the bridge?

Senator HUMPHREY. Yes.

Mr. SELL. No, sir.

Senator HUMPHREY. Or from the ship?

Mr. SELL. No, sir.

Senator HUMPHREY. So in every case, whenever you communicated it was by telephone from shore?

Mr. SELL. Yes, sir.

Senator HUMPHREY. And who were the——

Mr. SELL. Excuse me; I am sorry. From the *Salvia*, we did call. I am sorry. From the *Konev*, we could not call.

Senator HUMPHREY. Yes.

Mr. SELL. From the *Salvia*, we, the United States, was able to communicate with Washington via a phone patch, albeit with considerable difficulty and static.

Senator HUMPHREY. Yes. In any event, there were many, many calls. Were those calls all to the same number?

Mr. SELL. No, sir, they were not to the same number.

BEST COPY AVAILABLE

Senator HUMPHREY. The same office?

Mr. SELL. The majority of the calls I made were to the Office of Soviet Union Affairs. On occasion, I telephoned other offices in the State Department.

Senator HUMPHREY. Was there no communications center designated in Washington? You were just selecting persons to call on your own judgment?

Mr. SELL. No, sir. There was an informal crisis control center established in the Office of Soviet Union Affairs, and that is where I primarily directed my calls.

Senator HUMPHREY. Who was in charge of that crisis center, as you understood it?

Mr. SELL. Well, I was in New Orleans, so I think I should ask someone who was in Washington to respond.

Senator HUMPHREY. Ambassador Ridgway, can you supply——

Ambassador RIDGWAY. Obviously, the general authority for anything in the Office of Soviet Union Affairs would flow from me through the deputy to the office director, but it was a 24-hour operation, starting that Friday afternoon when we first became aware of what happened.

So who was in charge depended upon whether it was 2 a.m. and somebody had had to go home, and whoever was there was in charge.

Senator HUMPHREY. Well, in whose office was it physically located?

Ambassador RIDGWAY. I do not know. I will check right now. It was in Mr. Sell's own office. He had gone, so they used the space in his office.

Senator HUMPHREY. Can you name some of the officials with whom you spoke in these calls?

Mr. SELL. I spoke with a number of people. The primary people I spoke with were Susan Lysyshyn from my office; Mr. Mark Palmer, who is the Deputy Assistant Secretary for European Affairs; Mr. Mark Parris, who is the Director of the Office of Soviet Union Affairs.

But I spoke with many other people. There was a watch established; 8-hour shifts were established and several people were manning that center at all times, so I spoke with many other people as well.

Senator HUMPHREY. Were these people acting on their own authority, Ambassador Ridgway, or were they in contact with superiors?

Ambassador RIDGWAY. Throughout this, there was a chain of command. I think it would depend, as you would appreciate, Senator. If guidance had previously been given, as in the question of assuring a safe and neutral and welcoming place to conduct the interview, once that was all determined and was the direction in which we were going, then it was not necessary to keep going back and forth to superiors.

But for each decision point where something had to be done, then there were references not only up, but across the interagency community.

BEST COPY AVAILABLE

Senator HUMPHREY. Mr. Sell, in any of these numerous calls, was there ever any mention to any degree of international considerations in the handling of this matter?

Mr. SELL. None. The only discussions I had involved negotiations in Washington, the status of negotiations to get him off the ship, or my reporting what was going on in New Orleans.

Senator HUMPHREY. In the conduct of your activities, did you have any concern about international repercussions? The reason I ask is that the Air Force psychiatrist in his testimony indicated some personal concern on that score.

Mr. SELL. Senator, throughout this entire incident, my conduct was motivated, and indeed my instructions were to make it clear to the Soviets that we would insist on an interview off the ship in a neutral environment.

All of my actions, thoughts, when I was in New Orleans were directed toward accomplishing that.

Senator HUMPHREY. All right, so there was never under any circumstance, whether by telephone conversation or face-to-face conversation or in any form whatever, any discussion of international repercussions?

Mr. SELL. There were none that I can recall, and certainly none that would involve any kind of instructions to alter any course of conduct in order to avoid any kind of international repercussions.

Senator HUMPHREY. Who was this other State Department official with you?

Ambassador RIDGWAY. There were two. One was a Mr. James Thessin from the Office of the Legal Adviser, and the other Mr. Thomas Simons.

Senator HUMPHREY. Were you superior in rank to them?

Mr. SELL. I think Mr. Thessin and I are probably roughly equal in rank. I do not frankly know what his exact rank is.

Senator HUMPHREY. But you were in charge?

Mr. SELL. Mr. Simons is a senior foreign service officer and, as such, is superior to me.

Senator HUMPHREY. Well, who was in charge?

Mr. SELL. I was in charge—I chaired the interviews; I conducted and chaired all the interviews. After Mr. Simons arrived, I went back on the ship and stayed there until—with the exception of these occasional forays to make phone calls, I stayed on the ship.

I was in charge on the ship. Mr. Simons, it is my understanding, was in charge on the shore.

Senator HUMPHREY. So there was one State Department official with you aboard the *Salvia*?

Mr. SELL. On occasion, there were two State Department officials on board the *Salvia*. At some times, there was just one. There was always at least one, but there were times when there was only one.

Senator HUMPHREY. Did you conduct all of the communications with Washington or did the other officials participate?

Mr. SELL. No, sir. All of the other officials did. When I was on the scene, and in particular when we were in the naval shore facility, I was involved in all of the conversations with Washington, but I was not the only person on the phone.

BEST COPY AVAILABLE

Senator HUMPHREY. Yes. Well, which person in your party, then, received instructions that if Mr. Medvid signed a statement that he should be returned?

Mr. SELL. At that moment, the other senior State Department official and myself were both on the line.

Senator HUMPHREY. Can you tell us something about this taping of the conversations?

Mr. SELL. Senator, I can tell you very little about that. It was not done by me.

Senator HUMPHREY. Who did that?

Mr. SELL. The INS did. In fact, I did not even know it was being recorded until after the first interview, or midway through the first interview when we adjourned.

Senator HUMPHREY. In reviewing the transcript of that first tape—I understand there were two, one aboard the *Salvia* and one defective or partial taping at the naval station. I take it from your earlier statement this morning that you interpreted Mr. Medvid's nausea and his lengthy and dramatic—when you read it here in the transcript, his lengthy pause—according to the transcriber, 1 minute and 15 seconds elapsed from the time you asked him, do you wish to remain here in the United States, and he replied, and did not directly reply even then.

How did you interpret his nausea, and his lengthy pause at the crucial moment in his indirect response?

Mr. SELL. First, the nausea had occurred well before that in the interview, at least an hour before. The doctor and I personally interpreted the nausea as seasickness. I can testify there was grounds for seasickness. I felt a little nauseous myself.

Senator HUMPHREY. I see.

Mr. SELL. It is a small boat and the river was still rough from the after-effects of the hurricane. It was rolling. I can testify personally and vividly to that.

Senator HUMPHREY. Yes.

Mr. SELL. His pause was indeed dramatic, and I think it was longer than 1 minute and 15 seconds; it certainly felt longer. I think my personal opinion for the reason for the pause is he was relishing the attention.

Throughout, it was clear Mr. Medvid enjoyed—this is my personal interpretation again—it was clear Mr. Medvid enjoyed being the center of attention, and I think he enjoyed the drama of that moment.

Senator HUMPHREY. Thank you.

Senator SIMPSON. We will come back now to my 5-minute segment.

You were with him and you indicated he was watching television and he was "excited." What was the nature of his excitement? I have heard various stories that he was watching himself on television, and quite excited about that. What was that excitement, as you would describe it from your personal knowledge?

Mr. SELL. Well, Mr. Chairman, he was very interested in seeing any TV coverage of this incident in which he was involved, and obviously there was a lot of it. Any time a report came on, he wanted to know exactly what was said. He was just very excited by the fact of coverage and——

BEST COPY AVAILABLE

Senator SIMPSON. Did you translate the American television to him?

Mr. SELL. I did on occasion; on occasion, our interpreter did.

Senator SIMPSON. Did the U.S. Government seem to demonstrate, through specific actions, that it was completely in control of the situation, and that Medvid would be safe and have a haven and a place of refuge if he were to request political asylum in the United States? If so, what were those actions?

Mr. SELL. Mr. Chairman, in my view, Medvid was in doubt whatsoever that the U.S. Government was in firm control of the situation, and understood that if he had expressed the desire to stay in our hands he could do so. He signed a statement to that effect.

From the very beginning when we took him off the ship, he could be under no doubt that he was in a situation under our control. We took him to the *Salvia*, which, to him, must have looked like a naval vessel. All of the officers and enlisted men were in uniform. As far as he knew, he was on what looked like a naval vessel.

He saw us throughout the incident repeatedly work our will on the Soviets against their strenuous objections. He witnessed this confrontation that I have described earlier in which we used the threat of border patrol tactical squadrons to separate him from the Soviets to take him off the ship.

He knew we had taken him to a naval facility where he was guarded continually by uniformed border patrol officers. He saw us there work our will on the Soviets. There is no doubt in my mind that this man understood he was in a situation which was totally under the control of the United States.

Senator SIMPSON. Let me ask you, Mr. Sell, with your fluency in Russian and your testimony here, obviously you were out of the presence of Soviet officials on more than one occasion where you were alone with Mr. Medvid—just you and Mr. Medvid—so that he could have spoken with you quite "honestly" or frankly if he had wished. You have indicated that.

Could you please describe where the Soviet officials were when you had these times with him, and describe Medvid's behavior when the two of you were alone?

Mr. SELL. OK. The occasions which I was alone or I was with Medvid without the presence of any Soviets were several, but never during a formal interview. I want to make that—I think that should be absolutely clear. All the formal interviews were conducted in the presence of Soviets.

The occasions I was alone with him stemmed from the set-up that we established. There was a luxury suite of rooms in tbe BOQ, a bedroom with an attached bathroom, a door which led into a sitting room where the television was, and a couch.

We allowed one Soviet to be present in that sitting room at all times. We did not allow any Soviets to go into the bedroom or bathroom with Medvid. Excuse me. When the psychiatric interviews were conducted, they were in Medvid's bedroom and there was a Soviet doctor present.

But when Medvid was in his bedroom or in the bathroom, there were no Soviets present. There were times when I was with Medvid in the bedroom alone with him on occasion; also, in the bathroom.

BEST COPY AVAILABLE

For example, in the morning after he had washed and eaten breakfast, he asked for a razor and after I consulted with the psychiatrist as to whether we should give him one, the psychiatrist had said he saw no reason to not do it. So we gave him one and he shaved.

I stayed in there while he did that. I was alone with him during those occasions and he never said anything to me that was any different from what he said in the presence of Soviet officials.

I was also briefly alone with him on the boat trip out to the *Konev*, on the trip in the launch.

Senator SIMPSON. Senator Humphrey.

Senator HUMPHREY. I really have to contest the notion that Mr. Medvid could have great confidence in U.S. officials because he was aboard a naval vessel and people were in uniform, and so on and so on.

I cannot imagine how this guy could have any confidence in anything American after we acknowledged that he was truly seeking freedom and, for whatever reason, we betrayed him. I mean, how can you suggest a guy under those circumstances could have confidence in any American official?

It is a rather minor point, but I contest it enthusiastically. I think it is silly to suggest, after we did a job on this guy, that he could have any kind confidence in anything American, and particularly an American official, with no insult intended for you, Mr. Sell. I am sure that you did a very good job and had a very ticklish responsibility.

Furthermore, to suggest that a guy who had been through this terrible experience, this disillusionment of a lifetime, who was physically hurt, who had been drugged, who was seasick because of the rolling motion of the sea, if not the emotionalism of the situation, somehow enjoyed being the center of attention seems to me a little hard to accept.

It may be that the pause was an agony where he was trying to decide whether he should gamble once more on these Americans who had already betrayed him once, and that he was not trying to be cute or enjoy the moment, but that he was trying to decide here, surrounded by these Soviet brutes, whether he should trust us one more time.

Maybe that is why he took a minute-and-a-half to answer that question, and then answered indirectly. He did not say, yes, I want to go back. He answered in sort of a riddle that was inappropriate to the situation.

So you have your opinion on that, Mr. Sell, and I have my opinion.

Ambassador Ridgway, are you able to tell us anything about the taping of these interviews?

Ambassador RIDGWAY. No. The INS will have to take those questions.

Senator HUMPHREY. All right. Who made the decision to remove Mr. Medvid in the first instance?

Ambassador RIDGWAY. That is a tough one because it is the kind of a decision where we all knew what was right.

Senator HUMPHREY. Pardon me, go ahead. Sorry.

BEST COPY AVAILABLE

Ambassador RIDGWAY. You are talking about taking him off the Soviet vessel?

Senator HUMPHREY. Yes, and then who made the decision, likewise, to remove him from the *Salvia*; that is, not return him to the *Konev*, but to take him ashore?

Ambassador RIDGWAY. I will be happy to take some of these questions if you want us to try to figure out exactly who it was. But in every one of these, there was a group of people talking to the folks in New Orleans, referring questions.

Senator HUMPHREY. Yes.

Ambassador RIDGWAY. We are talking, as I indicated in answer your first question, State, Justice, NSC all looking at them. But we went down to take the man off the vessel. That was on Friday evening, and it was agreed that that was what Mr. Sell was to do.

Senator HUMPHREY. I think it is important in establishing the motives for ultimately returning Mr. Medvid to Soviet officials when our official conclusion was that Mr. Medvid's attempt at asylum or freedom was genuine in the first place. It is critical to this whole inquiry.

It strikes me as odd that these decisions were made by this amorphous, floating body of officials. This must have been a very difficult situation. It had, obviously, whether they played a part in it or not, potential international repercussions.

Some senior officials must have been involved and I think it is important we find out who they were and have a chance to discuss it with them.

Under what authority did we remove Mr. Medvid from the *Konev*, and then refuse to return him to the *Konev* and take him ashore?

Ambassador RIDGWAY. The vessel was in U.S. waters.

Senator HUMPHREY. Yes.

Ambassador RIDGWAY. There is a consular agreement that provides for matters touching on vessels of Soviet flag in U.S. waters. We went down to express our interest in exactly what had happened and to exercise our opportunity to talk with Mr. Medvid and, if he wished to seek asylum in the United States, to make sure that he got it, and pursuant to the same agreements, notified the Embassy of the Soviet Union in Washington what we intended to do.

Senator HUMPHREY. We were not outlaws in that case. We were acting under bilateral agreements. Is that what you are saying?

Ambassador RIDGWAY. Oh, yes.

Senator HUMPHREY. That is not one-time-only authority, right? We did not use it up? Presumably, if we felt we had just cause, we could have used it again?

Ambassador RIDGWAY. Yes.

Senator HUMPHREY. I am wondering why, then, the official, amorphous body in control of this within the executive refused to honor the subpoena of a committee of the Senate.

Ambassador RIDGWAY. I am just informed I am not authorized to answer legal questions on subpoenas and the like. Sorry, Senator.

Senator HUMPHREY. May we know the identity of this gentleman?

Ambassador RIDGWAY. He can introduce himself; he is from the State Department, Mr. James Hergen.

BEST COPY AVAILABLE

Mr. HERGEN. Senator, I have had the pleasure of being up here before the first time. My name is Jim Hergen. I am the Assistant Legal Adviser for Consular Affairs, and I also have a personal knowledge of this.

Senator HUMPHREY. Well, then, if you are not permitted or authorized or qualified to answer, and I can understand that situation, let me just express why I think that is an important question because a valid subpoena was issued and because the Department of Justice may—indeed, is not required, but certainly may detain any alien who is wanted for an investigation, whether judicial, executive, or legislative.

And, of course, the Department declined to exercise that power to detain an alien; in this case, Mr. Medvid, who was clearly wanted for a legislative investigation. And it would be very interesting to know—indeed I think it is important to find out—why the decision was made to ignore a subpoena of the Senate and to refuse to utilize this authority to detain an alien who was wanted for a legislative investigation.

I have to wonder what considerations played a role in that decision, particularly when the official conclusion seems to be that we regarded Mr. Medvid's attempt at freedom to be genuine; that he did not, in fact, fall off while he was examining the lights on the ship.

Obviously, those are questions you are not in a position to answer, but I think that is an important point. The authority was there; we used it once. The authority was even stronger in the second instance when a subpoena was outstanding. It was not used, and I think it is important we know why.

Why was it not used, particularly when the official judgment seems to be, at least from your point of view, that Mr. Medvid originally truly was seeking to escape from Soviet authorities and to seek asylum here?

Senator SIMPSON. Let me come back. I know that Senator Humphrey in his remarks before questioning mentioned some serious things about the gamble Mr. Medvid took and how he had been treated with some feeling, and I can understand that.

I have to wonder what the gamble might have been if, on the Soviet ship, they told him to either get aboard or they would do something to his parents that he might not like. I do not think there is anybody living that does not believe that did not happen; that they told Miroslav Medvid, "look, you keep messing around out there and you are never going to see your mother and father again. Now, you had just better give up the fun and games and get back on this ship; get your rump aboard and we are leaving."

Does anybody believe that did not happen? I think it probably did, but that is not even the issue. Who is to judge in this city whether he did the right thing or not? He had every single opportunity to accept asylum without question. I do not know of any asylum case I have ever been involved in—and we have processed 67,000 of them since I have been chairman of this subcommittee—where it was more apparent that we almost begged this man to take asylum. That gets lost in the material.

What is ever more lost is what may have happened to him, and what they told him, on his ship. Now, of course, we get quizzical

BEST COPY AVAILABLE

messages from TASS that he is at a little college near Lvov, or somewhere, and he is hoping that somebody from Congress will come and say hello to him and visit with him. That is a TASS News Agency report, so we take it on that face.

But, you know, in the midst of his judgment about freedom and all those things, there is an element of pure terror that must have gone on in him: The terror of never seeing his parents again may well have overriden any attempt to even think about asylum.

He probably should have taken a 20-minute break and three glasses of water to think about that one. So I think if you are going to shoot pool, you have got to draw back the cue ball occasionally and look at the whole table, and that is what I like to do from time to time.

Let us get back to that. There was testimony by the doctor that he talked of his mother and father. You were there. What was said about his mother and father? That seems to be very important in his life; it would be in mine. What was said?

Mr. SELL. Mr. Medvid, on the second day when he was in the custody on the naval facility, when we asked him did he want to return, began to refer with increasing frequency that he wanted to return so he could see his papa and mama. And I took that to be a sign of just what you have said, Mr. Chairman.

He also mentioned that his parents—or there was a discussion of his parents on one other occasion when we were going on the way out to the ship after he had signed his statement and we were returning him to the boat, to the *Konev*.

I had an opportunity again to talk to him alone and I asked him if he was certain he knew what he was doing. He said, yes, I know what I am doing; I am going back to the Soviet Union.

We rode for a couple more minutes and I asked him if he knew where he was going, and by then we were approaching the ship, which is a very large vessel and sort of towered over this little launch we were on. He pointed to it and sort of struck his chest and said, I am going back to a Soviet ship, with great pride, or every appearance of pride; let us put it tht way.

And, finally, as we neared the side of the ship I said, well, I hope you indeed see your papa and mama. And then he turned to me and he gave what was about the only genuine—what I at least personally interpreted as the only genuine sort of emotional feeling he had given for the last several hours. He turned to me with a genuine smile and he said, thank you very much.

Senator SIMPSON. And that occurred on the last visit back to the ship?

Mr. SELL. The last 10 minutes or so that he was in our custody.

Senator SIMPSON. And you asked him indeed if he knew what awaited him?

Mr. SELL. Yes, sir. I asked him if he understood what he was doing. He said yes. I asked him if he knew where he was going. He gave this answer about the ship. And then I said I hoped he did indeed get to see his parents.

Senator SIMPSON. Senator Humphrey, any further questions?

Senator HUMPHREY. Not for these witnesses.

BEST COPY AVAILABLE

Senator SIMPSON. OK, just a couple more, then, and I will get these in the record and then, Ambassador Ridgway, you will meet your schedule. Who are you addressing today?

Ambassador RIDGWAY. I do not know what kind of an audience I will have, but it is the last public occasion of the Department's observance of Women's History Week.

Senator SIMPSON. Let me just ask you, what was the reaction of the Soviet officials to our insistence, our demand, on interviewing Mr. Medvid both on the Coast Guard vessel and the naval facility ashore? What was their reaction?

Mr. SELL. Well, from very first contact with the Soviet consular officials, on the *Konev* they said they denied our right to an interview and said there would not be one and they would not agree to one.

Once negotiations in Washington had produced Soviet agreement to an interview, we arranged it—well, we arranged the first meeting on Saturday and then their reaction after that was that we had had the interview. We said we wanted an interview with Medvid; they had given us an interview, and that was enough and they would not allow him to be taken off the ship.

There were further negotiations in Washington and they eventually agreed to take him off the ship. Then when we insisted on taking him off the *Salvia*, they never agreed to that. They made it clear it was only done over their strenuous objections; that they would lodge a diplomatic protest and that it was done under the threat of force.

So they never agreed to our taking him off the *Salvia* onto the shore. They objected to that frequently.

Senator SIMPSON. Our final question: You conducted the interview aboard the *Salvia*, you asked him whether he wanted political asylum in the United States, you relayed his answer by telephone to the State Department. You were ordered or requested by the State Department to conduct further interviews of Mr. Medvid about his elliptical response, which I have a vision of in my head—elliptical response. And then you asked him again, after you had already received a negative response to your questions about whether he wished to defect. He was asked in Russian, not only by you in Russian, but by an interpreter who spoke both Ukrainian and Russian and was never asked to deal or speak in Ukrainian.

Did his answers, in your personal observation at the U.S. Naval facility ashore, change in any way from the first time he was asked until the second time he was asked, as the emphasis increased and increased, obviously, to get him to say that he wanted asylum?

Mr. SELL. Mr. Chairman, the content of his answers did not change. They were always, I want to go back. They became more vehement, and as I said earlier, he began to mention more frequently the fact that he wanted to go back not only to the Soviet Union, but he wanted to go back to return to his parents.

But there was never any alteration in the thrust of his answers.

Senator SIMPSON. Mr. Sell, you mentioned Medvid's statement which he signed. I am going to hand those to you—they are marked exhibits 9 and 10—and ask you if those are copies of the statements in English and in Russian, the originals that you personally saw of those two documents.

BEST COPY AVAILABLE

Mr. SELL. Mr. Chairman, yes, they are. These appear to be—I am confident they are copies of the statement that Medvid signed, copies both in English and Russian. I see—looking at this, I should correct my remarks; now, I remember.

Neither I nor the Soviet consular officer signed it. In fact, we both said we were going to and then, in fact, in the course of events we forgot. Neither one of us signed it, but I do see that the corrections made in the English text are in my printing.

Senator SIMPSON. Are they similar? Since you are fluent in both Russian and English, are they similar statements?

Mr. SELL. Yes, sir, they are exact translations. We had—I read them and compared them, as did our interpreter.

Senator SIMPSON. I ask that those be entered into the record.

[The following were received for the record:]

BEST COPY AVAILABLE

EXHIBT 9

ЗАЯВЛЕНИЕ МИРОСЛАВА МЕДВИДА

Я, нижеподписавшийся Мирослав Медвид принял решение возвратиться в мою страну -- Советский Союз. Я не прошу убежища в Соединенных Штатах. Это решение принято мной свободно и добровольно, после того, что мне была предоставлена возможность обсудить мое положение с американскими должностными лицами, которые мне объяснили, что я могу остаться в США если я это желал. Я решил этого не делать. Я находился в полном распоряжении моих физических и умственных способностей и я понимал, что по окончании настоящей беседы я свободно немедленно удалиться в сопровождении американских должностных лиц и что, если бы я принял такое решение, я не был бы возвращен под охрану советских должностных лиц.

Подпись: _____

Дата: 29 октября 1985г

Свидетели: _____

EXHIBIT 10

STATEMENT BY MIROSLAV MEDVED

I, Miroslav Medved, have decided to return to my country, the Soviet Union. I do not request asylum in the United States. I make this decision voluntarily, of my own free will after having had full opportunity to discuss my situation with officials of the United States who have made clear that I may remain in the United States if I desire. I am in control of my physical and mental faculties and understand fully that I am free immediately to depart this interview in company of U.S. officials and that if I had chosen to do so, I would not be returned to the custody of Soviet officials.

I have decided not to do so.

would not have been

would have been

_____
Miroslav Medved

October 29, 1985

BEST COPY AVAILABLE

Senator SIMPSON. What is the handwriting of Medvid? What is that described as? There were comparisons of his signature, and Ambassador Ridgway mentioned a difference between Roman and Cyrillic.

Mr. SELL. The writing here that is Mr. Medvid's is his signature at the indicated place at the bottom, both in the English and in the Russian text. And he also signed or initialed on the lines which were altered.

So those are the only parts that are his actual handwriting. The corrections of the text in the English version are my handwriting. The corrections in the text on the Russian version is the handwriting of our interpreter.

Senator SIMPSON. And who inserted the dates there, October 29?

Mr. SELL. I cannot swear to that, sir; I am not sure. I think it was our interpreter, but I could not swear a 100 percent to it.

Senator SIMPSON. Soviet officials were present when those statements were signed?

Mr. SELL. Yes, sir.

Senator SIMPSON. Soviet officials helped to negotiate that with the United States officials?

Mr. SELL. Yes, sir.

Senator SIMPSON. Medvid himself also negotiated that statement, did he not?

Mr. SELL. Yes, sir. He insisted on several changes to make it, in his words, more clear that he had never intended to remain in the United States and to get that fact into the text.

Senator SIMPSON. Well, I have no further questions. If any members of the subcommittee or any member of the U.S. Senate would have any further questions, I will forward those to you and ask for a prompt response. The record will remain open for a week.

I want to thank you very much, Ambassador Ridgway. You have been very courteous and helpful to the subcommittee. Our job is truth. That is what we are about, and I have pledged to Senator Humphrey that we would keep digging; bringing anybody he would like to trot up here and subpoena. I will subpoena them.

I am perfectly willing to go forward in any way, within the limitations of my own body. Until they clone me, I will try to pursue this as diligently as I can because it is a serious, serious issue.

But let no one believe that we in the United States do not believe that we did not quite do it right here. No one is trying to shield anyone. It is very impressive that these two men from the INS will appear with their counsel to state their position; and that the Commissioner is broad enough and expansive enough to allow that.

The State Department, through George Shultz, has allowed us one of its senior officials. And you, Mr. Sell, have been most impressive, in my mind, in your presentation, and I appreciate it. If more develops, we will contact you and pursue the matter further.

Thank you very much.

Mr. SELL. Thank you.

[The prepared statement and attachment follow:]

BEST COPY AVAILABLE

Prepared Statement of Rozanne L. Ridgway

Mr. Chairman and Members of the Committee. The case of Soviet Seaman Miroslav Medvid has generated considerable interest in the Congress, in the press and among the American people, as rightly it should. This is because it touches on the very fundamental question of life and liberty for a man who, on the basis of his extraordinary behavior the evening of October 24, we had every reason to believe was seeking political asylum in this country. I can assure you that when officials in Washington were informed about the original error which led to Seaman Medvid being returned to his Soviet ship, we took extraordinary measures to ensure that he was removed from the ship to our custody and given every opportunity to indicate whether he wished to remain here.

Mr. Chairman, among the many rumors and allegations which have developed around this case, prominent attention has been given to two mutually inconsistent conspiracy theories. The first alleges that the Administration conspired with the Soviets to return Seaman Medvid to the Soviets in order to avoid an incident prior to the November Summit. The second theory holds that we were duped by the Soviets and that the man we actually interviewed was a "substitute". Both allegations are completely false. From the start our primary concern was the welfare of Seaman Medvid; considerations about Geneva or the possible impact of this case on U.S.-Soviet relations played no role in our handling of this case. To assert otherwise is not only mischievous but flatly wrong. There is also no doubt that the individual we interviewed on October 28 and 29 was the same individual interviewed by the INS on October 24.

I do not intend to give a lengthy statement or repeat testimony already given. I refer you to the testimony given by my Deputy, William M. Woessner, on November 5, 1985 and

BEST COPY AVAILABLE

February 5, 1986 before this Subcommittee, my own testimony on November 7, 1985 before the House Subcommittee on Europe and the Middle East, and to an addendum I am submitting for the record with my testimony. However, I do want to set the record straight concerning sensational allegations that the Soviets pulled a switch. Those who make them ignore or do not appear to have all the facts. Two INS officer interviewed Seaman Medvid on shore on October 24 and took his photograph. One of those INS officers was with the INS party which boarded the M.V. Konev on October 25 and he identified the man he saw in the sick bay as the same man he interviewed on shore the night before. Present at this October 25 encounter with Seaman Medvid, which lasted several hours, was another INS officer who subsequently identified Seaman Medvid on October 26 in the presence of the Department of State representative. The INS officer present during the October 25 and 26 meetings identified Medvid not only by his physical appearance but by a mark on his heel which he had observed on both occasions. The same Department of State representative who saw Seaman Medvid on October 26 also interviewed Seaman Medvid on the Coast Guard Cutter Salvia on October 28 and at the naval shore facility on October 29. Alleged height and weight discrepancies from the preliminary physical examination by the Navy doctor aboard the M.V. Konev on October 26 ignore the fact that the man we interviewed on October 28 and 29 fit the INS description of October 24, matched the photograph taken by INS on October 24, matched the photo in Seman Medvid's Soviet passport and was the same man seen in the sick bay on October 25. Purported photographic "evidence" of a switch turns out to be poor quality photos taken surreptitiously by a military officer which in fact closely resemble the individual originally photographed by INS. Allegations that Medvid did not speak Russian are false; they are apparently based on statements by individuals who do not speak Russian. A reported handwriting

BEST COPY AVAILABLE

analysis, which we have never seen, was apparently based on a comparison of printing done in the Roman alphabet, which Seaman Medvid did not know well, and a Cyrillic signature. To repeat, these allegations are without foundation. There is no doubt that the individual we interviewed was Seaman Medvid.

Mr. Chairman, I am now prepared to respond to questions. I am accompanied by Mr. Louis Sell of the Office of Soviet Union Affairs who has first hand information concerning events which took place in New Orleans. He is prepared to assist me in responding to questions of fact.

IDENTITY OF SEAMAN MEDVID

-- THE ALLEGATION THAT THE SOVIETS PULLED A SWITCH AND THAT A SUBSTITUTE WAS INTERVIEWED IS WITHOUT FOUNDATION.

-- SUCH ALLEGATIONS IGNORE KEY FACTS WHICH MAKE IT COMPLETELY CLEAR THAT NO SUBSTITUTION OCCURRED.

IDENTITY ISSUE

-- THE DEPARTMENT OF STATE HAS NO DOUBT THAT THE INDIVIDUAL WE INTERVIEWED ON OCTOBER 28 AND 29 WAS THE SAME MAN ORIGINALLY INTERVIEWED BY INS ON OCTOBER 24. THIS IS BASED ON EYEWITNESS AND PHOTOGRAPHIC IDENTIFICATION.

-- AN INS REPRESENTATIVE CONFIRMED THAT THE INDIVIDUAL HE SAW IN THE SICK BAY OF THE M.V. KONEV ON OCTOBER 25 WAS THE SAME PERSON HE HAD INTERVIEWED ON SHORE ON OCTOBER 24.

-- ANOTHER INS OFFICER PRESENT AT THE FIRST MEETING BETWEEN THE DEPARTMENT OF STATE REPRESENTATIVE AND SEAMAN MEDVID ABOARD THE M.V. KONEV ON OCTOBER 26 HAD ALSO OBSERVED SEAMAN MEDVID THE PREVIOUS DAY IN THE SICK BAY OF THE M.V. KONEV FOR SEVERAL HOURS AND CONFIRMED THAT IT WAS THE SAME PERSON.

-- THE INS OFFICER PRESENT DURING THE OCTOBER 25 AND 26 MEETINGS IDENTIFIED MEDVID NOT ONLY BY HIS PHYSICAL APPEARANCE BUT ALSO BY A MARK ON THE FOOT WHICH HE OBSERVED ON BOTH OCCASIONS. MEDVID WAS IDENTIFIED TO THIS INS OFFICER BY AN INS OFFICER WHO HAD ORIGINALLY INTERVIEWED SEAMAN MEDVID ON SHORE ON OCTOBER 24.

BEST COPY AVAILABLE

-- THE DEPARTMENT OF STATE REPRESENTATIVE WHO FIRST SAW SEAMAN MEDVID ON OCTOBER 26 HAD WITH HIM A PHOTOGRAPH OF MEDVID TAKEN BY THE INS AGENTS WHO HAD INTERVIEWED HIM THE EVENING OF OCTOBER 24. THE DEPARTMENT OF STATE REPRESENTATIVE CLOSELY COMPARED THAT PHOTOGRAPH WITH THE MAN BEFORE HIM AND SATISFIED HIMSELF AND OTHERS PARTICIPATING IN THE INTERVIEWS THAT IT WAS THE SAME INDIVIDUAL.

-- FINALLY, THE DEPARTMENT OF STATE REPRESENTATIVE ALSO CLOSELY EXAMINED SEAMAN MEDVID'S PASSPORT. THE PICTURE AND THE PHYSICAL DESCRIPTION APPEARING IN SEAMAN MEDVID'S SOVIET PASSPORT WERE IDENTICAL TO THE INDIVIDUAL IN THE OCTOBER 24 INS PHOTO. THERE WAS THUS NO QUESTION BUT THAT THE SEAMAN INTERVIEWED BY INS OCTOBER 24 WAS THE SAME INDIVIDUAL SEEN BY THE STATE DEPARTMENT REPRESENTATIVE ON OCTOBER 26 AND INTERVIEWED ON OCTOBER 28 and 29.

HEIGHT/WEIGHT ISSUE

-- THE INS REPORT STATES THAT THE MAN THEY INTERVIEWED THE NIGHT OF OCTOBER 24 WAS 5 FEET 10 INCHES TALL AND WEIGHED 174 POUNDS.

-- THE MAN ACTUALLY INTERVIEWED BY THE DEPARTMENT OF STATE REPRESENTATIVE WAS APPROXIMATELY 5 FEET 10 INCHES TALL AND WEIGHED APPROXIMATELY 170 POUNDS.

-- THE MAN INTERVIEWED BY THE DEPARTMENT OF STATE REPRESENTATIVE ON OCTOBER 28 AND 29 WAS THE SAME MAN EXAMINED BY THE NAVY DOCTOR AND THE SAME DEPARTMENT OF STATE REPRESENTATIVE IN THE SICK BAY OF THE M.V. KONEV ON OCTOBER 26.

-- THE FACT THAT DURING HIS PRELIMINARY EXAMINATION OF MEDVID ON THE SHIP ON OCTOBER 26, WHEN NO PRECISE MEASURING INSTRUMENTS WERE USED AND MEDVID WAS LYING IN BED, THE NAVY DOCTOR ESTIMATED MEDVID'S HEIGHT AND AND WEIGHT SLIGHTLY DIFFERENTLY CAN BE ATTRIBUTED TO THE FACT THAT DIFFERENT PEOPLE OFTEN ESTIMATE HEIGHT AND WEIGHT DIFFERENTLY.

LANGUAGE ISSUE

-- THE DEPARTMENT OF STATE DISPATCHED A PROFESSIONAL INTERPRETER TO THE SCENE IN NEW ORLEANS TO ENSURE THAT THERE WAS NO PROBLEM IN COMMUNICATING WITH SEAMAN MEDVID.

-- THE INTERPRETER ARRIVED IN NEW ORLEANS AND BOARDED THE M.V. KONEV ON SATURDAY, OCTOBER 26; HE PROVIDED THE INTERPRETATION FOR THE INTERVIEWS WHICH TOOK PLACE ABOARD THE U.S. COAST GUARD CUTTER AND AT THE U.S.NAVAL SHORE FACILITY ON OCTOBER 28 AND 29. HE ALSO TALKED WITH SEAMAN MEDVID INFORMALLY MANY TIMES DURING THE 24 HOUR PERIOD SEAMAN MEDVID WAS IN OUR CUSTODY.

-- THIS PROFESSIONAL INTERPRETER WAS HIMSELF BORN IN KIEV, IN THE UKRAINE, AND IS FLUENT IN BOTH RUSSIAN AND UKRAINIAN. HE HAD THE OPPORTUNITY TO SPEAK TO SEAMAN MEDVID IN BOTH LANGUAGES. IT IS OUR INTERPRETER'S ASSESSMENT THAT ALTHOUGH SEAMAN MEDVID COULD SPEAK UKRAINIAN, HE WAS MORE FLUENT IN RUSSIAN AND THAT RUSSIAN WAS HIS PREFERRED LANGUAGE.

BEST COPY AVAILABLE

-- SOME OF THE MISINFORMATION THAT SEAMAN MEDVID SPOKE ONLY UKRAINIAN SEEMS TO HAVE DERIVED FROM THE FACT THAT THE ORIGINAL INTERPRETER USED BY INS IN A LONG DISTANCE TELEPHONE INTERVIEW ON THE EVENING OF OCTOBER 24 SPOKE TO SEAMAN MEDVID IN UKRAINIAN. THAT INTERPRETER HAS TESTIFIED THAT SEAMAN MEDVID IS FLUENT IN UKRAINIAN. AGAIN, WE ALL AGREE THAT HE COULD SPEAK UKRAINIAN. HOWEVER, IT MUST BE POINTED OUT THAT THE INS INTERPRETER HAS TESTIFIED THAT SHE HERSELF DOES NOT SPEAK RUSSIAN. SHE NEVER COMMUNICATED WITH SEAMAN MEDVID IN RUSSIAN AND IS THEREFORE NOT QUALIFIED TO EVALUATE SEAMAN MEDVID'S COMPETENCE IN RUSSIAN OR TO EVALUATE HIS RELATIVE COMPETENCY IN RUSSIAN OR UKRAINIAN.

-- OTHERS WHO HAVE ALLEGED THAT MEDVID COULD ONLY SPEAK UKRAINIAN AND THAT HE COULD NOT SPEAK RUSSIAN DO NOT SPEAK EITHER LANGUAGE AND ARE THEREFORE NOT QUALIFIED TO EVALUATE SEAMAN MEDVID'S RELATIVE COMPETENCY IN RUSSIAN OR UKRAINIAN.

GELTZ PHOTOS

-- IN OUR VIEW, THE PHOTOS TAKEN BY LT. GELTZ WHICH WE HAVE SEEN IN NO WAY SUBSTANTIATE ALLEGATIONS THAT THERE WAS A SWITCH.

-- DESPITE THE POOR QUALITY OF THE GELTZ PHOTOS, WHICH WE UNDERSTAND WERE TAKEN AT A LONG DISTANCE AND THROUGH A WINDOW, SEAMAN MEDVID IN THOSE PHOTOS CLOSELY RESEMBLES THE MAN IN THE ORIGINAL INS PHOTO.

HANDWRITING DISCREPANCIES

-- THOSE WHO HAVE REPORTEDLY SUBJECTED MEDVID'S HANDWRITING TO ANALYSIS HAVE NEVER SHARED THE RESULTS WITH THE APPROPRIATE U.S. GOVERNMENT AGENCIES.

-- HOWEVER, THE REPORTED ANALYSIS APPEARS TO COMPARE PRINTING IN ENGLISH IN THE ROMAN ALPHABET, WHICH SEAMAN MEDVID DOES NOT KNOW WELL, TO HIS SIGNATURE WHICH WAS WRITTEN IN THE CYRILLIC ALPHABET, WHICH HE DOES KNOW WELL.

BEST COPY AVAILABLE

Senator SIMPSON. Now, we will recess now until 1:15 and then complete our activities this afternoon, and I thank you very much.

[Whereupon, at 12:30 p.m., a luncheon recess was taken.]

[The subcommittee reconvened at 1:25 p.m., Hon. Alan K. Simpson presiding.]

Senator SIMPSON. The hearing will come back into session.

We will proceed with the panel that we began with initially, and that is Mr. Spurlock and Mr. Bashaw, please, and their counsel, Mr. Travis Douglas. The Commissioner is not here, I see, at this time.

You are gracious to let me interject this morning, so we could hear the testimony of Ambassador Ridgway and Mr. Sell. That was helpful for their schedule.

I have inquired, because of Senator Humphrey's comment, with regard to the closed session versus open session. I have now found that the Senate press galleries received notice that a portion of the hearing could be closed. I want this part of the record.

They then put out a notice yesterday that it was closed, which undoubtedly was picked up by the media. The committee then called the correction to the gallery yesterday in the afternoon, the late afternoon, and we have always indicated that it would be an open hearing, with a portion closed, which is now the case by this 5 to 0 vote this morning. A portion of it will be closed, but only as it relates to the issue of the contingency plans of the INS. I wanted to share that with my colleagues.

So, with that, we will go forward with the questioning of the witnesses under the 5-minute rule.

If I might, I think we were talking about your difficulties with Ms. Padoch, the interpreter, and that she was on the official list and that you had called her, based upon her phone number on the official list.

Let me ask you, what kind of a translation was used with Mr. Medvid? Was it a verbatim translation or direct translation, or what? Did Ms. Padoch only translate what you said and only what Medvid said, or did she communicate with him in ways which you would not have understood, since you had no knowledge of the language? How did that take place?

Mr. SPURLOCK. Senator, I was on one phone and Mr. Medvid was on a phone in the adjoining office. I did have—I could see Mr. Medvid from where I was seated, but I had no way of knowing—I have absolutely no knowledge of the Russian or Ukrainian language and I had no way of knowing what was being said between Ms. Padoch and Mr. Medvid. I had to rely solely on what she came back and told me.

Senator SIMPSON. Would she stop periodically to tell you what she was saying with him?

Mr. SPURLOCK. Yes, sir, and on occasions I would, when it seemed that her conversation—it seemed like it was possible that she may have been having a conversation with Mr. Medvid and it seemed like to me that it was taking longer than it should have.

And I asked her—I would interrupt her and ask her just to ask the specific questions and give me the answers. Of course, on some of the questions, all that is required is just a direct answer, like his

BEST COPY AVAILABLE

father's name or his mother's name, his date or place of birth and things of that nature. But occasionally it would get drawn out.

I might add, Senator, that I was on the phone with Ms. Padoch for about 1 hour, and normally the processing time for an alien is only about from 10 to 15 minutes, whether it is in English or Spanish.

Senator SIMPSON. So there was difficulty somewhere in the translation?

Mr. SPURLOCK. Yes, sir, it was.

Senator SIMPSON. And did you have trouble understanding her?

Mr. SPURLOCK. On several occasions, I had to ask her to repeat the answers that she gave.

Senator SIMPSON. And she indicated she had trouble understanding you, did she?

Mr. SPURLOCK. She did from the beginning. I had thought that later on after I had been on the phone with her a while that she would—I did not think that she was having any difficulty understanding me, but it is very possible that she could have.

Senator SIMPSON. Mr. Bashaw, were you familiar at all with the "immediate action asylum procedures" for Communist bloc defectors when you interviewed Mr. Medvid?

Mr. BASHAW. No, sir.

Senator SIMPSON. Are there such procedures?

Mr. BASHAW. Yes, sir. There is a section of the Immigration and Nationality Act, section 208.8, which addresses immediate action cases. I was made aware of this after the matter had initially occurred.

Senator SIMPSON. Those regulations apparently state that notification of potential and actual asylum applications from nationals of Communist bloc countries should be made to INS district and regional offices and to the State Department.

Would Mr. Medvid, in your opinion, qualify as a potential asylum applicant under those regulations?

Mr. BASHAW. No, basing that response on the fact that I received his replies through Ms. Padoch, through my partner, who was, of course, in direct telephonic communication with them.

When I asked Mr. Spurlock if he wanted political asylum and he responded no, he just does not want to go back to the ship, in my view at that point this matter did not fall within the purview of section 208.8; that the subject, in fact, was not tendering a request for asylum.

Senator SIMPSON. Mr. Spurlock, may I just ask you the first part of that question? Were you familiar with the immediate action asylum procedures for Communist bloc defectors when you interviewed Mr. Medvid?

Mr. SPURLOCK. No, sir, I was not.

Senator SIMPSON. Those were not known to either of you, then?

Mr. SPURLOCK. No, sir.

Senator SIMPSON. Did either of you have any contact with your superiors in the INS or with the State Department at any time during the night of October 24 and 25 when you interviewed Medvid before you returned him to the ship?

Mr. SPURLOCK. No, sir, we did not.

Mr. BASHAW. No.

BEST COPY AVAILABLE

Senator SIMPSON. So there was no contact with anyone that you two had. Now, you were there; you were the two there on the ground. Was there a call that said anything to the effect that, "this is a sensitive issue; this could cause an international incident; boy, watch out," or anything of that nature?

Mr. SPURLOCK. No, sir.

Mr. BASHAW. No, sir, no information to that——

Senator SIMPSON. Nothing?

Mr. BASHAW. Nothing.

Senator SIMPSON. At any time that night, October 24 and 25?

Mr. BASHAW. No.

Senator SIMPSON. Senator Humphrey.

Senator HUMPHREY. Mr. Spurlock, earlier you stated your opinion that you had not been dealt with fairly in this matter. Is there some other person or persons who ought to be included in a disciplinary proceeding?

Mr. SPURLOCK. Well, I do not understand the question.

Senator HUMPHREY. Do you feel that anyone is escaping punishment whose conduct was not in accordance with Department regulations?

Mr. SPURLOCK. No, sir, I do not.

Senator HUMPHREY. Mr. Bashaw, do you feel that you have been dealt with fairly in this matter?

Mr. BASHAW. No, sir. I am in agreement with Mr. Spurlock's remarks in that respect.

Senator HUMPHREY. And on what basis do you feel that you have not been dealt with fairly?

Mr. BASHAW. It is my clear understanding that this man did not want political asylum, clearly. In that view, I feel that our actions were totally responsible, totally acceptable within the guidelines provided to us in the handling of cases similar to this in the area of deserting crewmen.

Our decision to return him to the vessel was made in good faith, based on our knowledge of handling of similar procedures. The political asylum aspect not being at issue here, of course, is the basis for the disciplinary action, and in view of that fact, I feel that no disciplinary action is justified of any description.

Senator HUMPHREY. Have you ever been involved in the attempted defection of a Soviet bloc person?

Mr. BASHAW. No, sir.

Senator HUMPHREY. Mr. Spurlock, have you?

Mr. SPURLOCK. No, sir, I have not.

Senator HUMPHREY. Mr. Chairman, I am still very curious about why the subpoena from the Senate Agriculture Committee was ignored, at least to the extent that the Justice Department declined to detain Mr. Medvid while it had the authority to do so.

I have been trying to determine why the Department did not use its existing authority. On November 18, I wrote to the Attorney General asking that question and citing the State Department regulations under which a departure control officer can prevent the departure of an alien who is wanted for an investigation.

And I have yet, 4 months later almost, to get a reply. My inquiry was redirected from the Justice Department—that is, the Justice Department sent it to INS, and after months and months and

BEST COPY AVAILABLE

months, including pleas to legislative liaison to secure a response, I finally got a reply from INS, which is a lengthy chronology stating what we already know, but which does not answer the question of why Mr. Medvid was not detained to permit the Senate to avail itself of Mr. Medvid's testimony.

I have asked the Justice Department again for an explanation of its conduct, and I think it would be useful to this investigation if the subcommittee would lend its weight to that particular search and see if we cannot get an answer, because if it is the official judgment of the Government, as we seem to have heard this morning, that Mr. Medvid was truly seeking asylum when he twice jumped into the Mississippi River, then I cannot understand, except for reasons of international concerns, concerns over international ramifications, why the executive refused to detain Mr. Medvid and to permit the Senate to meet with him and determine in our judgment his true wishes.

I would ask the chairman that he assist me in this and getting a reply, finding out whose decision it was that the Senate could go fly a kite with respect to its subpoena and on what basis that decision was made.

Is the chairman in a position to help us in that?

Senator SIMPSON. I have said to my good friend from New Hampshire, who came here when I did to this place, that I will pledge to try to respond to anything you have in mind. If you have certain witnesses that you would like to subpoena, I will be glad to visit with you about that, whoever they may be.

If you have certain officials of the U.S. Government that you wish to visit with on that issue, I will certainly assist you with that. The Justice Department officials—if you will share with me the original correspondence and the INS response—I will work diligently to see that you get a response.

The subpoena which was served by the Agriculture Committee of the U.S. Senate was—in my feeling—served in a surreptitious way. It was wedged between two cartons of cigarettes. I used to, in my practice of law, know a lot of process servers, but I never saw a subpoena served that way. The Soviet ship captain may have just disregarded it totally. We cannot subpoena him, but I can promise you that we will find out exactly what occurred. My hunch, is that the minute this gentleman signed the statement, Mr. Medvid, in Russian and English—after the negotiations and everything that went on at the Coast Guard vessel and the separate naval facility—that as soon as all that was done, they said let this man go, and that was that.

Senator HUMPHREY. But that does not really answer my concern, Mr. Chairman. Obviously, we have no way of compelling the Soviet ship captain to appear, but the subpoena was directed at Mr. Medvid and the Justice Department knew and the executive knew of the subpoena and had the authority to detain Mr. Medvid so that he could respond to the subpoena.

Yet, nothing was done, and I want to know why nothing was done and on what basis that decision was made.

Senator SIMPSON. Well, we will find that out. My hunch is that they got about everything they needed from Mr. Medvid in the presence of the Soviet officials and the interpreters who spoke Rus-

BEST COPY AVAILABLE

sian and Ukrainian, in two different types of settings: nonthreatened and threatened.

So what would the subpoena, if served and responded to, produce more than what was produced that we know?

Senator HUMPHREY. But, you see, the Senate was making the inquiry asking for Mr. Medvid to appear. It was not, it seems to me, the place of the executive to decide whether the subpoena was justified or not.

The subpoena was there; the executive knew it. The executive had the authority to detain Mr. Medvid and did not. I want to know why and who made that decision.

Senator SIMPSON. I think if the subpoena had been served by tbe Foreign Relations Committee of the U.S. Senate rather than the Agriculture Committee of the U.S. Senate, it might have had more force and effect. That is just my own personal opinion. The proceedings of asylum are within the State Department and the Justice Department and not within the Agriculture Committee of the Senate.

Senator HUMPHREY. I do not think that the—in fact, I know for a fact that the State Department regulations which permit the detention of an alien who is wanted for an investigation do not specify from which committee or committees may come or which committees have more validity than others.

I think you and I are not going to come to an agreement on this point, but my point is that there was a valid subpoena. The executive had the authority, and in my opinion the responsibility, to detain Mr. Medvid so that he could answer that legislative investigation, and did not use that authority.

I am wondering why, especially if the executive believed that Mr. Medvid really meant to seek asylum in his two excursions into the Mississippi River. Was there a concern about the summit or other international considerations?

Senator SIMPSON. Well, you have asked those questions very adriotly, and we have heard no response that it was connected with that in any way, or that there was a conspiracy, or that there was an attempt to remove him from the United States so that he would not be the focus of an international incident which would crater the summit.

But if you will submit your questions to State and to Justice, I will assist you in getting a response.

Senator HUMPHREY. Thank you, because I have gotten none in 4 months.

Senator SIMPSON. I will bet we will do better.

Senator HUMPHREY. I hope so.

Senator SIMPSON. I am glad to help.

Senator HUMPHREY. For my part, I have no questions of these witnesses.

Senator SIMPSON. OK. I have a few more.

How many political asylum cases have each of you encountered in this last year's tour of duty?

Mr. SPURLOCK. Senator, it would be hard to say right off the top of my——

Senator SIMPSON. Would you care to guess?

BEST COPY AVAILABLE

Mr. SPURLOCK. I would say probably in the neighborhood of 10, but none from the Soviet bloc countries. It would be from El Salvador or Nicaragua, and those were processed and the aliens, under normal conditions, are given a warrant of arrest in order to show cause and are placed either on bond which is set by the district director or they are released on their own recognizance.

Senator SIMPSON. So you would say about 10, but none of them from Communist bloc countries?

Mr. SPURLOCK. No, sir.

Senator SIMPSON. Mr. Bashaw, do you have any——

Mr. BASHAW. I would place the figure higher than 10, but not having hard facts in front of me, I cannot speculate. But it is a number of them.

Senator SIMPSON. And how about ship-jumping itself, without the request for asylum. Is that a common happening?

Mr. SPURLOCK. Yes, sir, it is. Senator, the Port of New Orleans is, I think, now rated the second largest port in the United States. So, consequently, we have a large number of desertions in New Orleans, and we quite frequently run into deserted crewmen or crewmen that have been either detained on board or that have overstayed their lawful admission. And those crewmen are processed in a very similar fashion as what Mr. Medvid was processed.

Senator SIMPSON. But the very act of ship-jumping is an indication that the person does not want to go back to the ship. Is that not kind of a given?

Mr. SPURLOCK. Yes, sir. In most cases, the crewman has a problem either with the captain or another member of the crew, or a pay dispute, or maybe he does not like the food or some other treatment that he is getting aboard the ship.

It does not necessarily mean that he wants to remain in the United States, although there is quite a number of crewmen that do desire to stay in the United States for economic reasons. I would say that the majority of them are because of economic reasons that want to remain in the United States.

Senator SIMPSON. And thus they do not meet any kind of test as refugee or asylee?

Mr. SPURLOCK. No, sir, none whatsoever. They fall under, I believe, section 252(b), where they are just returned back to the ship or to the agent and they are repatriated either by air or on another vessel of the same lines.

Senator SIMPSON. And so you frequently do encounter ship-jumpers in the course of your duties in New Orleans?

Mr. SPURLOCK. Yes, sir.

Senator SIMPSON. The vast majority of them not seeking asylum?

Mr. SPURLOCK. No, sir. I think that probably the better term would be economic refugees.

Senator SIMPSON. Yes.

Unless you have more questions, Gordon, of this group, I do have some exhibits I think I want to get in the record.

This, Mr. Spurlock, is a Record of Deportable Alien, a photocopy of a document alleged to be the original Record of Deportable Alien. I have designated it as exhibit 8 and I would ask you to examine that and ask you if that is a photocopy of the original.

Mr. SPURLOCK. Yes, sir, that is a copy of the 213.

BEST COPY AVAILABLE

Senator SIMPSON. And then I present to Mr. Bashaw a Notice to Detain, Deport, Remove or Present Alien that bears a likeness, apparently, of your signature, and I ask you, Mr. Bashaw, if that is a photocopy of that document, as you recall it.

Mr. BASHAW. Yes, sir.

Senator SIMPSON. And then to Mr. Spurlock, a list entitled "exhibit 6," which is a list of the certified INS interpreters—a photocopy of a document which portends to be that—and ask you if you are familiar with that.

Mr. SPURLOCK. Yes, sir, it is.

Senator SIMPSON. And then a photograph of Miroslav Medvid, or alleged to be. Is this the photo that you took of Miroslav Medvid?

Mr. SPURLOCK. Yes, sir, it is.

Senator SIMPSON. And I will present that to you and ask Mr. Bashaw, is that the man that you saw as Miroslav Medvid?

Mr. BASHAW. Yes, sir, it is.

Senator SIMPSON. And then I hand you pictures numbered 2, 3, and 4, taken by the naval photographer from, apparently, a window across from the area where Mr. Medvid was being transported. I ask you to look at those and, if you can, tell me if that is the same man that you processed on October 24 and 25.

Mr. SPURLOCK. Senator, it is hard to tell, but it does appear that that is the same person.

Senator SIMPSON. Mr. Bashaw, do you have——

Mr. BASHAW. I have no quarrel with that, sir. It is difficult to say exactly because of the quality of these particular prints, but it appears to me that that is the same man that we are speaking of.

Senator SIMPSON. I would then ask that those be entered into the record.

[The following were received for the record:]

BEST COPY AVAILABLE

CERTIFIED INS INTERPRETERS

Supervisor: MARTHA JACOBS NYC FTS [redacted] 3441
(212) 264-5837 264-5902 212 620

June 1983

ALBANIAN

Peppa, Victoria	383-5478
Lielin, Helena	776-3898
	740-4426

ARABIC

El Kadi, Adnan	516-669-3704
Haddad, Vivian	373-2312
Kalisky, Rachel	222-5051
Riahi, Malek	923-6525
	941-2403

BENGALI

Chowdry, Ibrahim	873-7559
Sikder, Mohammed	662-4918
Trivedi, Dhiri	779-5310

BULGARIAN

TOLEDO, SOPHIE	874-0559

CHINESE

Leung, Sun	516-389-7135
SEEYO, SHIH	884-6404
Yip, Luther	267-3850
Mei, Yen	476-1671

CREOLE

Charles, Laurette	362-4487
Simon, Maxclair	451-2999
Ladouceur, Andre	469-9586
Harlatier, Andre	528-2157

ETHIOPIAN

Yohannes, Saba	995-9807

FARSI

Dadgar, Masouneh	353-4033
Papazian, Elize	426-6840
Saidi, Naim	981-0903
Fais, Mohammed	657-6173
Kakar, Mohammed	297-2747

INDIAN (ALL LANGUAGES FROM INDIA)

BENGALI

Chowdry, Ibrhim	873-7559
Sikder, Mohammed	662-4918
Trivedi, Dhiri	779-5310

FINNISH

Pellinin, Maija	324-1261

FOO CHOW

Lin, He Chi	777-2284

FRENCH

SALLO, JOHN	[illegible]-2367
Greenlee, Anneta	[illegible]-7471
Haddad, Vivian	[illegible]-2312
TOLEDO, SO	[illegible]
YANES, Milia	252-9651
* all of Creole Interpreters	

GERMAN

TOLEDO, SOPHIE	[illegible]-0559

GREEK

JACOBS, MARTHA	6[illegible]-6471
Mihaildis, Afrediti	9[illegible]-3[illegible]1

GUJIRATI

Trivedi, Dhiri	779-5310

HEBREW

Meyrowitz, Helen	614-0983
Haddad, Vivian	373-2312
Kalisky, Rachel	222-5051

HINDI

Chowdry, Ibrahim	873-7559
Sikder, Mohammed	662-4918
Trivedi, Dhiri	779-5310

HUNGARIAN

Ritter, Evelyn	[illegible]

PORTUGUESE

Power, Ernest	924-8479
Greenlee, Anneta	[illegible]-7471

BEST COPY AVAILABLE

GUJRATI

Trivedi, Dhiri	779-5310

Hindi

* same as Bengali

URDU

Chowdry, Ibrahim	873-7559
Faiz, Mohammed	657-6173
Trivedi, Dhiri	779-5310

INDONESIAN

Parmono, Josodidigo	271-6671 879-0600 Ext. 15

Italian

GALLO, JOHN	471-2367
YANES, MIRTA	252-9659
JACOBS, MARTHA	628-6871

JAPANESE

Chung, David	761-0807
Min, Kyung	786-8135
Pangia, Aileen	516-379-9467

KOREAN

Chung, David	761-0807
Min, Kyung	786-8135
Min, Inmy	663-7460
Kim, Young	757-7110

POLISH

Schrager, Clara	827-1240 724-2802
Padesh, Irene	475-3699
Crelke, Jadwiga	457-3825

TURKISH

Mihailidis, Afroditi	927-3851
Fenik, Inci	426-0537

UKRANIAN

Padech, Irene	475-3699

URDU

Chowdry, Ibrahim	873-7559
Faiz, M	657-6173
Trivedi, Dhirdi	779-5310
Sikder, Mohammed	662-4916

PASKISTANI

Kakar, Mohammed	297-2747

PUNJABI

Madan, Dolly Madan, Ved	516-485-4139

PASHTU

Kakar, Mohammed	297-2747
Saidi, Naim	941-0903
Faiz, Mohammed	657-6173

RAUNANIAN

Atanu, Dimitru	426-0828

RUSSIAN

Greenlee, Anneta	799-7471

SIGN LANGUAGE

Society for the Deaf	673-0500

SINHALA

DeSilva, LP	986-7040

SPANISH

GALLO, JOHN	471-2367
Greenlee, Anneta	799-7471
NORIEGA, Amalia	542-9370
TOLEDO, SOPHIE	874-0559
YANES, MIRTA	252-9659
Power, Ernest	924-8479
Radu, Dimitru	426-0828

THAI

Wanne, Somart Wanne, Vichot	947-5159

VIETNAMESE

Bui, Yen	476-1671

YUGOSLAV

TOLEDO, SOPHIE	874-0559

YIDDISH

TOLEDO, SOPHIE	874-0559
Meyrowitz, Helen	614-0983

* Note: For emergencies not covered by this list call M. JACOBS 628-6871 or S. Toledo 874-0559

BEST COPY AVAILABLE

UNITED STATES DEPARTMENT OF JU[illegible]
Immigration and Naturalization Servic[illegible]

NOTICE TO DETAIN, DEPORT, REMOVE OR PRESENT ALIENS

PORT OF New Orleans, Louisiana DATE 10-24-85

To the Owner, Agent, Consignee, Charterer, Master, Commanding Officer, or Officer in Charge of the

MV MARSHALL RUNTEY
(Name of vessel or aircraft identification)

Universal Shipping Company Line.

Pursuant to the provisions of the Immigration and Nationality Act, and the Regulations issued by the Attorney General thereunder, you are directed to–

- [X] Detain on board.
- [X] Deport from the United States.
- [ ] Remove to _____ * on _____, 19___, at _____ M.
- [ ] Present to _____ on _____

for the following reason (s) Section 241(a)(2) of the Immigration and Nationality Act in that, you entered the United States without inspection.

the alien(s) named below:

NAME	STATUS ON VESSEL OR AIRCRAFT (1st, 2d, 3d, or tourist class passenger; member of the crew; stowaway etc.)
MYROSLAW, Medwid	Cheman
DOB: 3-24-60, USSR	

J.C. Balus
(Immigration Officer)

Received on board the above vessel/aircraft the alien(s) listed: SHPG 10-25-85 0045 HRS

(Signature & Title of person signing receipt) (Date) 19___, at _____ M. (Time)

(Signature & Title of person signing receipt) (Date) 19___, at _____ M. (Time)

(Signature & Title of person signing receipt) (Date) 19___, at _____ M. (Time)

*When removal to the immediate vicinity is directed, the alien must be detained on board the ship on which they arrived pending delivery to the immigration station. Such transfer must be made by the most direct and expeditious route with the least possible contact with the public, and at the expense and responsibility of the steamship company. Aliens who have been held for further medical examination in the belief that they are suffering from communicable diseases must be completely isolated from other passengers and from the public.

FORM I-259 (REV. 10-1-69)

☆ U.S. Government Printing Office 1970—772-821/458

BEST COPY AVAILABLE

RECORD OF DEPORTABLE ALIEN

(See A.M. 2790.31-34 for instructions)

Family Name (Capital Letters): [illegible], Ludvid
Given Name:
Middle Name:

Sex: [illegible] Hair: [illegible] Eyes: Brn Complexion: LT
Country of Citizenship: USSR
Passport Number and Country of Issue:
File Number: A10 25 [illegible]
Height: 5'6" Weight: 174 Occupation: Crewman
U.S. Address (Residence) (Number) (Street) (City) (State) Zip Code:
Scars or Marks: None
Date, Place, Time, Manner of Last Entry: 9-1 [illegible] 10/24/85 M/V MARSHAL [illegible]
Passage Boarded At:
FBI No.: NA
Marital Status: ☒ Single ☐ Married ☐ Separated ☐ Widow(er) ☐ Divorced
Number, Street, City, Province (State) and Country of Permanent Residence: Also, Sokal, Lwow, USSR
Method of Location, Apprehension: DC GA
Birthdate: 3/24/60 (25)
Date of Action: 10/24/85
Location Code: NLL NLL
At (Hour): New Orleans
Date & Hour: 10/24/85 1130 PM
City, Province (State) and Country of Birth: Same as above
AR: A
Form (Type & No.): ☐ Lifted ☐ Not Lifted
By: Graham and Spurlock
Visa Issued At—NIV No.:
Social Security Account Name:
Status at Entry: D-1
Status When Found: Same
Date Visa Issued:
Social Security No.:
Send C.O. Rpt. Check To:
Length of Time Illegally in U.S.: 8/X 1/72 Hrs.
Immigration Record: C/I
Criminal Record: C/I
Name, Address, and Nationality of Spouse (Maiden Name, if appropriate): N/A
Number & Nationality of minor Children:
Father's Name, and Nationality and Address, if Known: Wasyl (USSR) Same
Mother's Present and Maiden Names, Nationality, and Address, if Known: Anna (USSR) Same
Names Due/Property in U.S. Not in Immediate Possession: ☐ None Claimed ☐ See Form I-43
Fingerprinted: ☒ Yes ☐ No
Lookout Book Checked: ☐ Not Listed ☐ Listed, Code
Deportation Charge(s), (Code Words): ROTEM
Name and Address of (Last) Current U.S. Employer: Universal Shipping, New Orleans, La.
Type of Employment: Electrician
Salary: $ ____ by
From: 9/85 To: 10/85

Narrative (Outline particulars under which alien located apprehended. Include details, not shown above, re time, place, manner of last entry, and elements which establish administrative and/or criminal violation; indicate means and route of travel to interior). Alien has been advised of communication privileges pursuant to 8 CFR 242.2(e).

Initial _____ Date 10/24/85 Subject advised of rights per 8 CFR 287.3.

Subject claims to be a citizen and native of Russia.

Subject last entered the United States as set forth above as a D-1 Crewman but deserted the M/V Marshal Konies before having been inspected by an Immigration Officer.

Subject claims to have signed on the vessel at Ryeka, Yug. about 1 month ago. Subject signed on as an electrician.
Subject claims that he jumped ship in the United States for political and moral reasons.
Subject left his passport and gear on board the ship.

Subject has no friends or relatives in the United States.

Interpreter: Irene Padoch, 71 East 7th St., New York, New York.

No Funds.

The subject was turned over to the ~~Agent and returned to Vessel~~ NLL-6-166 from bottom up)

Ernest H. Graham, DPA

DISTRIBUTION:
ORIG: FILE
CO. Y: CPA NLL
COPY: CPA FILE

Received (subject and documents) (report of interview) from:
Officer: Spurlock
19 85 at ____ ( ) M.
Disposition: ~~I-259 and returned to Vessel~~
(Receiving Officer)

Form I-213 (Rev. 4-10-78)Y UNITED STATES DEPARTMENT OF JUSTICE Immigration and Naturalization Service

BEST COPY AVAILABLE

(6X22-Nov. 12)MEDVID--This is a photograph of Soviet seaman Yaroslav Medvid who possibly tried to defect from a merchant ship in the Mississippi River. The photo was made by the United States Immigration and Naturalization Service and released in Washington Tuesday by the Senate Agriculture Committee.(AP LASERPHOTO)(hd3155lhe)1985

DEAN—Wire

Senator HUMPHREY. Mr. Chairman, may I ask another question?

Senator SIMPSON. Yes, indeed, Senator.

I believe we can now excuse Mr. Bashaw, or you can stay; I do not care which.

Senator Humphrey.

Senator HUMPHREY. Mr. Spurlock, have you ever seen these photos before?

Mr. SPURLOCK. Which photos, sir?

Senator HUMPHREY. The ones that you just described as——

Mr. SPURLOCK. The enlargement is the photo that I took of Mr. Medvid on——

Senator HUMPHREY. I mean those other ones, those fuzzy ones.

Mr. SPURLOCK. Yes, sir, I have

Senator HUMPHREY. Where did you see those?

Mr. SPURLOCK. I saw them—Mr. Day, when he was in New Orleans, had a copy of those photos.

Senator HUMPHREY. Did you see them on any other occasion?

Mr. SPURLOCK. No, sir. That is the only occasion that I have ever had to see them.

Senator HUMPHREY. That is all, Mr. Chairman.

Senator SIMPSON. OK.

Now, the next witnesses, Deputy Chief Border Patrol Agent, William B. Worley, and Border Patrol Agent David T. Vannett, please.

Senator HUMPHREY. I wonder if the chairman can explain who these officials are and why they are important to this inquiry.

Senator SIMPSON. Mr. Worley and Border Patrol Agent David Vannett, along, with Agent Spurlock, boarded the *Marshal Konev* and made a positive identification of Miroslav Medvid aboard that ship. Deputy Chief Worley thereafter was in frequent contact with Miroslav Medvid until he finally returned to his ship on October 29, and this is for the purpose of addressing the rather sensational issue of their being a double Medvid.

So if you would proceed if you have a statement, please.

TESTIMONY OF WILLIAM B. WORLEY, DEPUTY CHIEF AGENT, U.S. BORDER PATROL; AND DAVID T. VANNETT, AGENT, U.S. BORDER PATROL

Mr. WORLEY. Thank you very much for being here, sir, and giving me the opportunity to testify before the subcommittee.

On Friday, October 25, 1985, I was called by the chief patrol agent of the New Orleans Border Patrol sector to his office and informed of the events of the previous night, and instructed to go aboard the motor vessel *Marshal Konev* and locate Miroslav Medvid and remove him to the Border Patrol sector headquarters for further processing and additional—to determine exactly what his intent was.

I took Agent Spurlock with me because he was the only one available that had processed and observed Miroslav Medvid, and Mr. Vannett just happened to be someone who was standing around that I took to assist in this project.

We boarded the vessel approximately 3 p.m. that afternoon and were escorted to the captain's cabin. I explained to the captain my

BEST COPY AVAILABLE

purpose for being there. He produced Medvid's passport upon request.

I asked to see Miroslav. He told me no, it was not possible at that time; that he was confined to the ship's infirmary with a self-inflicted injury and was under sedation. At that point, I offered the medical assistance of the area of New Orleans, any type of assistance that he deemed necessary. He informed me that it was not required, since they had a ship's doctor who was also a surgeon and an anesthetist.

The captain produced the passport. I showed it to Mr. Spurlock; he identified it as the individual who he had processed the previous night. And I asked to view the seaman, which the captain readily agreed to.

We proceeded to the infirmary, with a procession of Russian officials and myself and Agent Spurlock. Agent Spurlock entered the infirmary. I stepped briefly in, saw the seaman in the bed. Mr. Spurlock, standing at the foot of the bed identified him to me and I stepped back out and started talking to the captain at that time.

I informed the captain that I was going to maintain a presence in the infirmary. He agreed to that without any hesitation. I stationed Spurlock in the infirmary with instructions just to merely observe the seaman and that I would relieve him on the hour with Mr. Vannett.

I returned to the captain's cabin with the captain. The captain was a little bit concerned with the fact that, you know, we were there, what authority we had there. I explained to him to the best of my ability, and he demonstrated a desire to communicate with his embassy in Washington, DC. He left the ship approximately at about that time.

At 5 p.m., or about, I sent Mr. Vannett to the infirmary to relieve Mr. Spurlock who returned to the captain's cabin. At about 6 p.m., the captain returned to the ship. He was extremely distraught, in my opinion. He told me that I was to have no other contact with the seaman and I was to withdraw the agent I had stationed in the infirmary and to leave the ship immediately.

I agreed to withdraw our agent from the infirmary, but I refused to depart from the vessel. We brought Mr. Vannett up from the infirmary. The captain demonstrated a desire that he no longer wanted us in his stateroom, and he made arrangements to have us retire to the officer's wardroom where we retired to.

And I remained at that location until approximately 11:30 that night, when Mr. Sell came aboard the vessel I reported to him the conditions of the vessel, the conditions of crew, and so on and so forth.

I remained onboard the vessel until late the following day after the examination. Prior to the examination, Mr. Sell asked that someone accompany him to the infirmary to identify Medvid. Mr. Vannett who was transporting a State Department official to the vessel and who had spent an hour with Medvid was instructed to aid Mr. Sell because I had only had a brief encounter with him, and it was my judgment that he, Mr. Vannett, would be better able to identify the seaman to the State Department.

I instructed Mr. Vannett to accompany the party to the infirmary for the identification purposes. After the identification, we re-

BEST COPY AVAILABLE

tired to the wardroom. A report was written by a doctor, also by agent Vannett, and given to me by Mr. Thessin of the State Department.

I hand-carried the reports from the vessel to the Border Patrol sector headquarters and turned it over to the regional commissioner and the State Department officials there. It was merely, to the best of my knowledge, just a statement on the physical conditioning of Medvid.

The next opportunity that I had to view the crewman was onboard the Coast Guard buoy tender *Salvia*. At that time, I saw him on two brief occasions, the first time when we confronted the Russian entourage with the fact that we were prepared to remove him from the vessel by force, if necessary, and then later when we were providing security when we were removing him from the wardroom to the 41-foot Coast Guard cutter which transported him to the shoreline at Belle Chasse.

The next occasion was at the BOQ, at the naval support activity there in New Orleans. For many hours, I had the extended opportunity to observe the individual and it was the same individual, without hesitation on my part, that was identified to me in the infirmary by Agent Spurlock.

Senator SIMPSON. Thank you for your statement.

Mr. Vannett, do you have a statement?

Mr. VANNETT. No; I do not have any statement. I believe Mr. Worley has sufficiently covered the chronological happenings. I will be, I think, better served to answer any questions one might have during the times I was aboard the ship for identification purposes as you feel they would be necessary.

Senator SIMPSON. Yes; I will proceed with questions.

Mr. Vannett, you were a key person in the chain of identification that ensured that the Medvid who was returned to his ship on the night of October 24, 1985, was the same man that our Government took off the *Marshal Konev* on October 28, 1985, for further interviewing.

Could you please describe your role in that chain of identification, and tell us how you positively identified the man that we removed from the *Marshal Konev* on October 28 as the same man that you saw in the ship's sick bay on October 26, 1985, along with Agent Spurlock?

Mr. VANNETT. I never did see the crewman after Saturday, the 26th, when I went in the sick bay with the Navy doctor and the State Department. So from that point on, I have no knowledge as to the identity of who went aboard the Coast Guard vessels, and from there to the naval hospital.

However, the two particular times that I did observe Mr. Medvid was, as Mr. Worley explained, on Friday, the first day we boarded the vessel at the point where I had relieved Mr. Spurlock in the infirmary to observe the crewman and to verify that he was in good health or that he was the person.

Mr. Spurlock had indicated to me that this was the man he knew of from the night before. I just maintained a presence in the infirmary until the captain returned from his conversation with his Soviet embassy people, requesting that we vacate the infirmary room.

During the time—for that hour period that I was in there, there was the Soviet doctor in there briefly and one other crew member, who I have no idea as to his name or identity. He was a young man who spoke only a very few words of English. Needless to say, we did not carry on much of a conversation

I spent the hour looking out the window and observing the crewmember as I was standing at the foot of his bed. Miroslav did not have any particular facial characteristics or scars or any identifying marks. I can only guess as to his size, weight, and possible age from my past experiences.

However, standing at the foot of his bed, he was covered from about the waist area to his feet. One of his feet, his left foot, was exposed. And for an hour of looking for something to observe, I looked his feet over pretty good.

Senator SIMPSON. It would take you a long time to do that with me. [Laughter.]

Mr. VANNETT. He had some different things I remember about his left foot, in particular—the way his toenails were cut, a special callous on his left big toe that at one time or another he had apparently tried to remove or somebody had doctored to a degree; tried to cut off the excess skin off the callous.

It was not outstanding, but it was possibly different than another crewmember's foot would have been. This is the—other than his facial characteristics, his resemblance on the picture—no doubt in my mind that it was him, lacking the special attention I paid to his foot. This was another manner of identifying him on the subsequent visit with the Navy doctor and the State Department.

Senator SIMPSON. Thank you.

Senator Humphrey.

Senator HUMPHREY. Let us see. Who was the first American to lay eyes on Mr. Medvid after he had been returned? Is that you, Mr. Spurlock, after he had been returned to the ship?

Mr. SPURLOCK. After he was returned to the *Marshal Konev?*

Senator HUMPHREY. Yes.

Mr. SPURLOCK. Yes, sir, I was.

Senator HUMPHREY. OK, and you observed him where, in the infirmary?

Mr. SPURLOCK. He was in the bed in the infirmary.

Senator HUMPHREY. And he was unconscious at that point?

Mr. SPURLOCK. Yes, sir, he was heavily sedated at that time.

Senator HUMPHREY. He was out; he was not conscious?

Mr. SPURLOCK. No, sir.

Senator HUMPHREY. And was he covered with a blanket, or how was he laid out?

Mr. SPURLOCK. He had a sheet—well, I would not exactly say laid out, Senator, but he did have a sheet over his body from his waist down to his knees or slightly below.

Senator HUMPHREY. Yes. He was lying on his back?

Mr. SPURLOCK. Yes, sir, he was.

Senator HUMPHREY. Did you observe any head injuries of any kind?

Mr. SPURLOCK. None at all, sir.

Senator HUMPHREY. Did any of the others?

Mr. WORLEY. No, sir.

BEST COPY AVAILABLE

Senator HUMPHREY. That is one of the peculiar things, and perhaps we ought to talk to these folks. The shipping agents claim that ashore after his second accidental fall overboard, Medvid was handcuffed and physically restrained and was violently resisting and was, in fact, according to their reports, beating his head on the rocks.

Yet, the Medvid you folks saw later did not even have a scratch.

Mr. SPURLOCK. Not exactly, sir. He did have a small bruise on the right chest area, but it was more like a small scrape where it could have been done in the scuffle or whatever had ensued the night before.

I do not have any idea how it may have gotten on his body, but that was the only distinguishing mark that I actually observed.

Senator HUMPHREY. Well, it is odd. Unless the reports of the shipping agents are inaccurate, one has to conclude either that Medvid had a very hard head or they have soft rocks in Louisiana or it was not actually Medvid.

That is all.

Senator SIMPSON. That might be something we would pursue at a subsequent hearing, have the shipping agent here as to what did occur, because no one with the Federal Government was involved at that time.

Senator HUMPHREY. One other question, if I may.

Senator SIMPSON. Yes.

Senator HUMPHREY. Mr. Spurlock, who supplied the handcuffs to the shipping agents?

Mr. SPURLOCK. I did, sir.

Senator HUMPHREY. Why did you do that? Was he violent or something?

Mr. SPURLOCK. No, sir, not at all. He had not been restrained in anyway during the entire processing from the time we encountered him until the time we released him. But we, on occasions, do give other agencies the plastic handcuffs for their use. It is a lot lighter; they can throw them in a vehicle and do not have to worry about getting them lost or stolen.

So we do, on occasion, supply other agencies with these.

Senator HUMPHREY. On occasion, but why did you supply them on this particular occasion?

Mr. SPURLOCK. For the same reason, sir, that I would have on any other occasion.

Senator HUMPHREY. Which is?

Mr. SPURLOCK. If they had requested them or if I felt that if they did not have any, then we will give them to them for use later. On a lot of occasions, sir, the shipping agents are called by the ship's captain to remove, to forcibly remove a crewman from their vessel who has become intoxicated or violent in some nature.

And quite frankly, we will wind up eventually processing these aliens. But until such time as we are called in, these chauffeurs or the agents, the people from the shipping agent are required to restrain and remove these people from the ship, whether it be to take them to the hospital or to have them placed in a jail somewhere.

And so, consequently, on several occasions they have a need for these.

BEST COPY AVAILABLE

Senator HUMPHREY. But this was not a case of someone being removed from a ship; quite the reverse. What made you decide in this case to provide handcuffs?

Mr. SPURLOCK. As I stated before, sir, it is one of those things that we occasionally do. I gave them to them for future use, not necessarily in this case, because I did not feel at the time that they were going to have any problems with Mr. Medvid.

We had had no problems with him up until that time. I had no reason to suspect that they would have any problems with him.

Senator HUMPHREY. Did the shipping agents ask for handcuffs?

Mr. SPURLOCK. No, sir, they did not.

Senator HUMPHREY. Well, then, why did you supply them in this case?

Mr. SPURLOCK. As I told you, for their future use, not because I felt they had any need for them at that particular time.

Senator HUMPHREY. Do you just pass around handcuffs?

Senator SIMPSON. Would you describe the handcuff? Is that a handcuff?

Mr. SPURLOCK. Yes, sir, that is one of them.

Senator SIMPSON. Is that what you are speaking of?

Mr. SPURLOCK. Yes, sir.

Senator HUMPHREY. Does that immobilize a person?

Mr. SPURLOCK. Not in anyway. It will immobilize their hands if they are——

Senator HUMPHREY. Is it as effective as handcuffs?

Mr. SPURLOCK. Yes, sir, it is.

Senator HUMPHREY. Then I do not see any relevance, frankly, to the question.

Senator SIMPSON. Well, I just do not think of that as a handcuff somehow. It certainly may do a lot of things, but it looks like it is just a piece of plastic about 18 inches long with, for the record, a corrugated thing with a loop on the end that you pull through.

I am sure it does certain things that you have to get done, but it does not look like a handcuff. But it certainly looks like it could do the job.

Senator HUMPHREY. What do you call those objects in the Border Patrol?

Mr. WORLEY. We call them disposable handcuffs. We buy them by the gross, sir. There is nothing unusual for us to dispense those to other agencies.

Senator HUMPHREY. They are specifically designed as a type of handcuff?

Mr. WORLEY. That is the reason I buy them, sir.

Senator HUMPHREY. Not that it is an important point, but I do not think we ought to belittle the capability of that object. Obviously, it worked in this case.

Mr. WORLEY. Yes, sir, but we buy those things by the gross and we readily dispense them to anyone who we feel may or may not need them or who requests them. They are readily available and we consider them disposable.

Senator HUMPHREY. Thank you.

Senator SIMPSON. Mr. Worley, what were your orders when you initially boarded the *Marshal Konev?*

BEST COPY AVAILABLE

Mr. WORLEY. My orders were to board and remove the crewman for further processing, sir.

Senator SIMPSON. And you also saw Medvid in the sickbay of the *Marshal Konev* when Agent Spurlock first identified him and, later, when Medvid was aboard the *Salvia*, and still later when Medvid was at the naval facility on shore.

Mr. WORLEY. Yes, sir.

Senator SIMPSON. Well, then, I would ask you to comment on the dramatic article in the New York Times of March 2, 1986, raising questions about whether the Soviets switched seamen during the period between the initial contact with Medvid in the sickbay and the later interviews and medical examinations of him.

Can you say with certainty that the Medvid you saw in the infirmary when you first boarded the ship was the same person you removed and were present with when you went to the Coast Guard vessel?

Mr. WORLEY. Yes, sir.

Senator SIMPSON. Without any question whatsoever?

Mr. WORLEY. Senator, I did not remove the man from the vessel.

Senator SIMPSON. But you were——

Mr. WORLEY. But it was the same man that was in the bed in the infirmary that was identified by Agent Spurlock, was on the *Salvia*, and was on the naval base at the BOQ that was subject to the questioning by the State Department personnel.

Senator SIMPSON. And you saw that same person on each occasion?

Mr. WORLEY. Yes, sir. I saw him on numerous occasions, sir.

Senator SIMPSON. And there was no question in your mind about who that was?

Mr. WORLEY. None whatsoever, sir. The misnomer that this was an imposter, I think, may have came from the fact that there was an erroneous identification of the ship's doctor.

When they disembarked from the motor vessel going to the *Salvia*, the newspaper mislabeled Miroslav Medvid. They identified the ship's doctor as Medvid, but all the people in that photographic were, you know, identifiable to me. It was a poor quality newsprint, but it was identifiable.

Senator SIMPSON. Is this a picture here of Miroslav Medvid I present to you, with a one at the top left and a two at the top right? Is that Miroslav Medvid?

Mr. WORLEY. Yes, sir.

Senator SIMPSON. And then, have you seen the pictures that were designated as two, three, and four, taken with a camera from an area across the area where he was being transported? Have you seen those pictures?

Mr. WORLEY. Yes, sir. Mr. Day showed those to me in New Orleans.

Senator SIMPSON. Mr. Day did, when he was in New Orleans during his investigative activities on behalf of this subcommittee?

Mr. WORLEY. Yes, sir.

Senator SIMPSON. And is that, in your mind, Miroslav Medvid, with the bandage, and that other person in the photograph?

Mr. WORLEY. There is no doubt in my mind, Senator. I was there; although not in the photographs, I was there when this movement

took place and this is the gentleman Miroslav Medvid; no doubt about it.

Senator SIMPSON. Mr. Vannett, can you say also that you know that picture is Medvid and that the smaller, less good quality pictures are of Mr. Medvid?

Mr. VANNETT. Without reservation, the large picture is Mr. Medvid. Of the other three photos taken, as you say, at the naval headquarters, I would have no hesitation saying that the man identified, the man in all three pictures with the sling on his arm, is the same person as seen on the ship and this picture.

Senator SIMPSON. So neither of you believe that any switch could have occurred?

Mr. VANNETT. I have no reason to believe that, and I do not believe it could have been done.

Mr. WORLEY. No, sir, I do not either.

Senator SIMPSON. And you were there, Mr. Worley, at all three occasions?

Mr. WORLEY. Yes, sir, I was.

Senator SIMPSON. It seems to me that your personal examination of the subject is very material in this. It is possible that someone on the New York Times may have made a mistake—no, I am not going to say that; leave that out of the record. [Laughter.] I think that that essentially covers my material.

Senator Humphrey, please.

Senator HUMPHREY. One or two more, if I may.

Senator SIMPSON. Yes.

Senator HUMPHREY. Mr. Spurlock, it was you who took the original large, clear photograph?

Mr. SPURLOCK. Yes, sir; it was.

Senator HUMPHREY. Did you at any time subsequent to that take any other photographs of Medvid?

Mr. SPURLOCK. No, sir; I did not. I had no means of taking any more photographs of him when I was aboard the ship, which was my last contact with Mr. Medvid, which I believe was on Friday, the October 25.

Senator HUMPHREY. You did not take any photos aboard the *Konev?*

Mr. SPURLOCK. No, sir; and I doubt very seriously if the Russians would have allowed me to take a camera or take any pictures on board.

Senator HUMPHREY. Did you ever observe a gash on the forehead of Mr. Medvid at any point?

Mr. SPURLOCK. No, sir.

Senator HUMPHREY. Thank you, Mr. Chairman.

Senator SIMPSON. Let me ask Mr. Buck Brandemuehl to come to the table, since the material that I am going to ask you about has already been presented by Mr. Sell, and we will very shortly go into our closed hearing and ask the other things of Mr. Brandemuehl.

Let the record show that this is Mr. Buck Brandemuehl, Assistant Commissioner at INS for the Border Patrol.

If you could describe, please, for the record the reactions of the *Marshal Konev* captain and the Soviet embassy officials when they

BEST COPY AVAILABLE

were informed that Medvid would have to be taken off of the *Marshal Konev* for interview and that Medvid would have to be taken off of the Coast Guard vessel for a further interview——

Senator HUMPHREY. Pardon me, Mr. Chairman.

Senator SIMPSON. Yes.

Senator HUMPHREY. Will you permit me to interrupt because I am going to have to leave to deal with something I have postponed many times?

The reaction, of course, is recorded on the tape recording, discreetly made. I have read through it. I do not see any reason it needs to remain classified/confidential, and I would urge that it be released.

And in addition to that, as you will recall from an earlier hearing, we were told that a part of the second interview at the naval station was likewise discreetly recorded. We do not have a transcript of that, although we understand that much of it was lost because of a breakdown of the equipment.

I would hope we could see the transcript of whatever was recorded in that second instance, and that likewise that be made public. Let me just conclude on the same note by saying I have requested immediately upon learning 2 or 3 weeks ago that tapes existed copies of the tapes of the Justice Department, and have been given the usual runaround.

I did not even succeed in getting a transcript until I asked you to provide it to me, which should have been unnecessary. I should have been able to secure that from an executive agency.

In any event, I do think that those materials ought to be made public, and I would ask your assistance in getting both the tapes and the transcripts of both interviews.

Senator SIMPSON. I think as a U.S. Senator, those are quite available to you.

Senator HUMPHREY. But they are not, I can assure you.

Senator SIMPSON. Well, they will be. It takes you 4 hours to listen to them and they are in Russian and English and there are large gaps while there are other things going on. I am certain that we can make arrangements for you to hear those tapes.

The whole substance of the tape is what I presented to you prior to the time of this hearing this morning at your request. As soon as you made the request of me, I produced it.

Senator HUMPHREY. Indeed, yes.

Senator SIMPSON. Yes.

Senator HUMPHREY. My complaint is against the executive agencies which have dug in their heels on this.

Senator SIMPSON. Not here, however, and that is what I want to make clear. You make requests; I will try to respond.

Now, you will not be present for the closed hearing?

Senator HUMPHREY. Oh, I know that our officials acted bravely. I do not need that——

Senator SIMPSON. That is what I am doing it for: you.

Senator HUMPHREY. I have never contested that. I do not think it is really terribly relevant, but——

Senator SIMPSON. You do not think it is relevant to show that they were quite interested in keeping this man in the United States? You indicated through your entire threaded-through activi-

BEST COPY AVAILABLE

ty that they were not interested; that they wanted to jettison him and get him out of here.

Senator HUMPHREY. There is no question in my mind, at least, that the U.S. officials were determined to remove Mr. Medvid in the first instance. My contention is that he probably was in no condition physically or mentally to sign that statement.

The statement should not have been regarded as valid, and the executive departments should have honored the subpoena of the Senate which was intended to get Mr. Medvid off of the ship and to ensure that his body have repaired itself from the acknowledged substantial doses of drugs, et cetera, and that he was, in fact, in a state where he could make a fateful decision. That is my point.

Senator SIMPSON. Well, two doctors testified about that. I do not know what other testimony would ever be able to be developed on that. If we went into a year-long investigation, there would be nothing more to be developed on the issue of how this man was at the time these inquiries were made.

It was indicated that he was sedated; that he was under drugs before. At the time the two doctors testified, they indicated that it was not material that was in his system. The important part was what did he look like, how were his eyes, what were his motions, what was his speech, and he passed those tests.

Senator HUMPHREY. We might want to call other medical experts as witnesses to see if they agree with those doctors.

Senator SIMPSON. Well, you know, we might, but the closed hearing—the purpose of the closed hearing was for you and no one else.

Senator HUMPHREY. I see; I have read the transcript; I know what was said. If it is being done for me, it is being done unnecessarily. I appreciate it, but in any event I cannot stay because I have got to take care of an interview which I have postponed a number of times.

Senator SIMPSON. It is not part of the transcript and you will not find it in the recordings, and that is why it is closed.

Senator HUMPHREY. I see; I do not mean to appear ungrateful, but I do not really see that it would be useful to me to know that we were prepared to torpedo the *Konev*, or whatever it was we were prepared to do. I take it for granted that we were——

Senator SIMPSON. It does show an increased enthusiasm about keeping him here, which is, it seems to me, relevant to what you have said; that we were not interested in keeping him here, that we wanted to get him out of here so that we would not ruin the summit conference.

Senator HUMPHREY. No; I think that the arguments you are making are with regard to removing him the first time; that we were determined to do that and we did that. My contention is that there might have been some pulling of punches with regard to the decision to accept Medvid's signing of a statement when quite possibly he was not in any condition to make it.

Senator SIMPSON. Well, I think that I will try to accommodate you in every way, but at some point in time the ball game only has nine innings. And then at that time, at least this umpire will step out of the field and somebody else can trot it up and run with it, because I have lots to do.

BEST COPY AVAILABLE

So I think that finality, you know, somewhere has to be in it, unless we wish to go on perhaps like the Kennedy investigation or the King investigation. And if so, I will do the very best I can; I will do my level best to produce witnesses and a sensible, truthful hearing process. And when I get to the end of that process, I will leave it to someone else to proceed with. That is my view.

Senator HUMPHREY. Thank you, and I appreciate your efforts.

Mr. NELSON. Mr. Chairman, might I say something?

Senator SIMPSON. Yes.

Mr. NELSON. Senator Humphrey, for your benefit a number of us have been waiting here all day to be prepared to go into the closed session, as Senator Simpson indicates, primarily for your benefit because of the many allegations you have consistently made.

We have been waiting patiently for a long time and, Mr. Chairman, I would only suggest that we recess this open hearing for 15 minutes to allow Senator Humphrey the opportunity to participate in that closed session before he has to leave for some other venture, because it is certainly not the interest of the executive branch to come back again for a closed hearing on this issue, which you are very likely to bring up, when the opportunity has been set and we are prepared to do so.

So I would ask if we could reconvene in closed session now so we can accommodate Senator Humphrey.

Senator SIMPSON. I would do that, and if you could remain another 10 minutes, I think you will have anything you wish to have.

Senator HUMPHREY. I really cannot, Mr. Chairman. I have promised an interview to a TV station which I had to cancel yesterday. They need it today; they need it not later than 2:45.

For my benefit, I do not need to know what we were prepared to do. I do not regard that as terribly relevant, but I appreciate your willingness to conduct that. Surely, there must be others who may be interested in hearing that testimony.

Senator SIMPSON. I thought it was terribly relevant from what you have been telling me for weeks, and that is that we made a half-hearted attempt to retain this person because of the rather absurd claim that there was some conspiracy between the State Department and INS to ship him out of here before he messed up our diplomatic activities in the world.

Am I missing something?

Senator HUMPHREY. I do not know how to make myself clearer.

Senator SIMPSON. I do not know how I can make myself any clearer either, but the purpose of the closed hearing was for that purpose. If you do not want to have it, I am not going to ask these gentlemen to return at some future time and do it in the future.

Senator HUMPHREY. Fine; I do not really think that will be necessary. I just want to make sure I understand. You are prepared in closed hearing to lay out what course of action the Executive was prepared to take in the event Soviet officials refused to allow Medvid to go aboard the *Salvia?*

Senator SIMPSON. That is correct.

Senator HUMPHREY. I do not really feel that I need to hear that. I appreciate the willingness of the parties to divulge that, but that was not one of my pressing issues.

BEST COPY AVAILABLE

Senator SIMPSON. Well, I just speak of it in relation to the high drama of an international conspiracy and a switched Medvid. Even if there were seven of them, they are all gone. They will not return.

If you wish me to have the Secretary of State ask if the fatal phone call was made, I will be glad to visit with him. But the issue is if we did nothing to see that this man received on our attention on asylum, then this is a very material part of it. What you would hear is what we were going to do to assure that this man had every right to claim asylum and freedom in the United States. This is what you have based your entire comments on, freedom, freedom, freedom.

You know, I have heard that throughout—mixed with conspiracy, conspiracy, conspiracy, mixed with doubles, doubles, doubles, and that is what I say.

Senator HUMPHREY. Well, thank you, Mr. Chairman. I must go now.

Senator SIMPSON. OK.

Senator HUMPHREY. I appreciate the opportunity to have participated today.

Senator SIMPSON. Fine, thank you. I appreciate your being here very much.

Mr. NELSON. Mr. Chairman, if I might make a request that Senator Humphrey remove from the record any allegation that he has made, and he will not make any in the future, regarding any alleged failure of the United States to make efforts to remove Medvid from the vessel, because those kinds of comments have been made.

If he wants to withdraw them since he does not appear to think they are relevant, I think the record should so reflect.

Senator HUMPHREY. Well, this is an extremely weighty procedure, Mr. Chairman. Let me just say that I am not yet satisfied especially with respect to the refusal to honor a valid subpoena, particularly when the Executive had the authority to detain Mr. Medvid or any person who is wanted for a legislative investigation.

I must go now. Thank you.

Senator SIMPSON. Well, with that spirited exit, I appreciate it, Gordon; thank you for being here.

Senator HUMPHREY. Thank you.

Senator SIMPSON. I can understand your frustration, Mr. Commissioner. I want the record to personally reflect that you have been more than forthcoming with me. Indeed, I want to tell you how much I appreciate that.

I, as chairman of the subcommittee, will not be engaging in further attempts to get you to provide that type of testimony, and we will leave it at that. I personally will want to hear that; I will appreciate that.

Thank you to the Immigration Service and the officers that are here, and Mr. Bashaw and Mr. Spurlock and Mr. Worley and Mr. Vannett. I realize how sensitive this has been for you because of the disciplinary proceedings with the INS; I am fully aware of that.

You, Mr. Travis Douglas, thank you; you have been very helpful. I appreciate very much your willingness to have your clients here.

59 577 O - 86 - 6

BEST COPY AVAILABLE

We will proceed with this hearing at some future time, but not to the point of absurdity. At least I shall not be involved in it to the point of absurdity; that is not my bag.

So, with that, we will have—I think we will use this room, and so I would have a 5-minute recess and we will have the closed hearing right here in this room.

Thank you very much, and thank you all for your excellent assistance.

[Whereupon, at 2:37 p.m., the open hearing of the subcommittee was adjourned.]

BEST COPY AVAILABLE

U.S. DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

March 28, 1986

Honorable Alan K. Simpson
Committee on the Judiciary
Subcommittee on Immigration and Refugee Policy
Washington, DC 20510

David Vannett, Deportation Officer
Federal Detention Center
Oakdale, La. 71463

Senator Simpson,

In response to your letter dated March 11, 1986 I am forwarding the following requested information.

My recollection of Mr. Medvid is that he measured approximately 5'10", and weighed about 165 pounds. His build was thin but muscular and sinewy. He appeared to me as being firm with well-toned muscles.

I hope this information will be helpful.

Sincerely,

David Vannett

David Vannett
Deportation Officer

BEST COPY AVAILABLE

U.S. BORDER PATROL
Immigration and Naturalization Service
P.O. Box 6218
New Orleans, Louisiana 70174

Office of the
Chief Patrol Agent

April 1, 1986

Senator Simpson
United States Senate
Committee On The Judiciary
Washington, DC 20510

Dear Senator Simpson:

Per your request, - Mr. Medvid was:
A white male approximately 21 to 25 years of age
height- 5'8" to 5'10"
weight - 160-170
medium build

Thank you for your support throughout this difficult matter.

Sincerely,

W. B. Worley
William B. Worley
Deputy Chief Patrol Agent

BEST COPY AVAILABLE

United States Department of State

Washington, D.C. 20520

APR 7

1986 APR -7 AM 11:57

April 01, 1986

Dear Senator Simpson:

I am replying to your letter of March 11 to Mr. Louis Sell, in which you requested a description of the Soviet sailor, Miroslav Medvid.

Mr. Sell has advised us that, based on his direct observation of Seaman Medvid during the 24 hour period he was in our custody, he was about five feet ten inches tall, probably weighed in the vicinity of 165 pounds and was of slender but muscular build.

If we can be of further assistance to you in this or any other matter, please do not hesitate to contact us.

With best wishes,

Sincerely,

James W. Dyer
Acting Assistant Secretary
Legislative and Intergovernmental Affairs

The Honorable
Alan K. Simpson,
United States Senate.

BEST COPY AVAILABLE

DEPARTMENT OF THE NAVY
NAVAL MEDICAL CLINIC
NEW ORLEANS, LOUISIANA 70142-5300

IN REPLY REFER TO

04 April 1986

APR 14 RECD

The Honorable Alan K. Simpson
Chairman, Subcommittee on Immigration and Refugee Policy
Committee on the Judiciary
United States Senate
Washington, D. C. 20510

Dear Senator Simpson:

In reply to your request dated 11 March 1986, I offer the following. Before each answer, your original question is reprinted:

1. Question: Could you describe the tests or examinations that you performed on Mr. Medvid to determine whether he was under the influence of drugs. Why did you conclude that blood and urine tests were not necessary?

   Answer: Before answering the question, some background information will be necessary. In your question, "under the influence" is assumed to refer to psychological influence and more specifically pharmacologically induced docility and increased susceptability to suggestion. To my knowledge, only four pharmacologic classes can cause this (numerous individual drugs are in each class, but all agents of a given class produce approximately the same effect). Two classes, the Barbituates and Sedative/Hypnotics, produce obvious drownsiness, relaxation, slurred speech and ataxia (unstable gait) if given in sufficient quantities to have a significant psychological influence (as defined above).

   Phenothiazines (neuroleptics) is another group of psychoactive drugs which may have subtle effects producing normal behavior in a previously psychotic individual; however, when given to a normal person in quantities adequate to influence behavior (especially influence against one's will), the dose must border on or exceed the toxic level and produce obvious signs. These would include one or more of the following: tachycardia (heart rate greater than 100), muscle rigidity, tardive dyskinesias (tongue protrusions; muscle spasms in the wrist, neck, ankles, jaw and other less frequent symptoms), miosis (small pupils), decreased reflexes, decreased conciousness, hypotension.

   The final group is the Tricyclic Antidepressants. Once again, these drugs can have subtle effects normalizing abnormal behavior but when administered to a normal person to influence behavior, obvious clinical effects occur. These include nausea and vomiting, drowsiness, ataxia, nystagmus (abnormal eye movements), mydriasis (dilated pupils), involuntary limb movement. Hypothermia and extreme (usually defined as above 106°F) hyperthermia has been rarely noted.

   Returning to the original question, no tests (i.e. laboratory) were performed. My examinations on 26 OCT 85 (holographic report, written while still aboard the Soviet ship and forwarded to Washington, D. C. by State Department personnel - copy enclosed) and 28 OCT 85 (formal typed report dated 06 November 85- copy enclosed) did not reveal any clinical evidence (e.g. ataxia, slurred speech, abnormal pupils, involuntary limb movement, decreased conciousness) of existing drug effects. Thus no laboratory studies were deemed necessary or useful to determine drug influence.

2. Question: Please describe Mr. Medvid's height, weight, bodysize, and general build.

   Answer: It has now been six months since I saw Mr. Medvid. I refer you to my description in my holographic report dated 26 OCT 85 and say that the characteristics mentioned still seem true. One point of clarification: When I state "short stature" I am using American males (relatively tall by world standards) and to a degree myself (six feet) as a reference. In absolute terms, I would estimate that Mr. Medvid was approximately five feet, seven inches.

BEST COPY AVAILABLE

Concerning his body size and general build, I would say that he was "athletic" but not in the sense of a body builder or serious athlete. To express this in relative terms, I would say he was slightly more muscular than a typical American male of the same height and weight.

3. Question: You mentioned in your testimony that Mr. Medvid's left wrist was injured. Did you undress and examine this injury? Could you please describe the extent and severity of his injury.

   Answer: Please refer to my report dated 06 November 85 on the 28 OCT 85 exam. Specific attention should be paid to the sections labeled "Extremities" and "Assessment".

4. Question: What were you told about the Medvid case before you actually examined him? What was your medical objective in each of your examinations of him?

   Answer: When initially contacted the evening of 25 OCT 85, I was informed by State Department Personnel that a Soviet seaman had jumped ship in the Mississippi River, swum to snore, was picked-up by Border Patrol agents, then returned to the ship; however, subsequently, it was suspected that political asylum was being sought and State Department intervention was planned. My assistance was being requested to determine the general well-being of the sailor.

   Since, by 26 OCT 85, Mr. Medvid had not been seen (by U.S. Officials) for more than 24 hours, arrangements were made with the Soviets for a brief interview/medical examination that afternoon. The stated objectives were twofold: (1) to compare the photograph taken by the Border Patrol with the individual presented as Miroslav Medvid and (2) to determine if any immediate threat to life or limb of the seaman was present.

   On 28 OCT 85, the more detailed exam (report dated 06 November 85) was performed. This exam was to provide a general physical assessment of Mr. Medvid. The objective was fundamentally to provide a baseline physical exam on which the psychiatric exam could be superimposed.

5. Question: How much time did you spend in close proximity with Mr. Medvid?

   Answer: On 26 OCT 85, I was in Mr. Medvid's presence for approximately thirty minutes during the brief medical exam. I was next with the seaman from approximately 1700 EDT 28 OCT 85 until approximately 0100 EDT 29 OCT 85 and again from about 0800 29 OCT 85 until the conclusion of the negotiations when Mr. Medvid was placed aboard the Coast Guard Cutter and returned to the Soviet ship.

6. Question: Attached is a picture of Medvid taken by Border Patrol agents during Medvid's first interview, which was also attached to the report of these agents (Spurlock and Bashaw). Can you positively identify this man as the same man you examined on October 26 and 28, 1985?

   Answer: Yes. This is the same man I examined October 26 and 28, 1985.

Respectfully yours,

J. M. Caruthers

J. M. CARUTHERS
Lieutenant Commander,
Medical Corps,
U. S. Navy

BEST COPY AVAILABLE

DEPARTMENT OF THE NAVY
NAVAL MEDICAL CLINIC
NEW ORLEANS, LOUISIANA 70142

IN REPLY REFER TO
06 November 1985

PHYSICAL EXAMINATION CONDUCTED ON MIROSLAV MEDVID 28 OCT 1985 AT 2345

T. = 100.4 (oral) Pulse = 84 Respiration = 18 Blood Pressure = 130/88

(Note: Patient admits to nasal congestion, slight cough and slight sore throat for past 2 - 3 days.)

General Appearance: Alert, oriented, conversant, no obvious distress. Behaves somewhat flippantly.

Head/face: Normal without evidence of recent trauma.

Ears: Pinna normal bilaterally, canals/tympanic membranes clear.

Eyes: Pupils equal, mid-position, round and reactive to light without Marcus-Gunn, fundi without hemorrhages, exudates or papilledema. Extra ocular movements intact.

Nose: Normal

Throat/mouth: Normal and without lesions.

Neck: Supple, without adenopathy.

Lungs: Clear with good breath sounds in all quadrants.

Heart: Regular rhythm without murmurs or gallops.

Thorax: Normal without evidence of trauma.

Back: Normal.

Abdomen: Without superficial evidence of trauma. Bowel sounds normal, soft, non-tender without masses or hepatosplenomegaly.

Neuro: Cranial nerves grossly intact.

Deep tendon reflexes normal and equal bilaterally (Note: Reflexes in left arm not tested secondary to wrist injury).

Strength in all four extremities grossly normal.

Extremities: Several ecchymotic areas on right arm in various stages of resolution (not noted on exam 26 October 85). Approximately 5 cm. linear laceration anterior left wrist with three silk (7) sutures in place without erythema, drainage, or lymphangitic streaking. Patient able to flex left fingers and had good capillary refill in nail beds. Extremities otherwise normal.

Lymphatics: No left axillary or left epitrochlear adenopathy.

Assessment: (1) Probable mild viral syndrome
(2) Apparently superficial laceration left wrist (healing well).
(3) Apparently minor trauma right arm.

Subj: PHYSICAL EXAMINATION CONDUCTED ON MIROSLAV MEDVID 28 OCT 1985 AT 2345

(4) No evidence that patient is physically incapable of participating in his negotiations.

J. M. Carruthers
J. M. CARUTHERS
LCDR MC USN

BEST COPY AVAILABLE

Examination 10/26/85 Approx 4:00 PM. EDT

Appearance: brown hair, blue eyes, short stature, approx 150 lb, approx 25-30 years of age.

General: alert, oriented, conversant, no obvious distress (except more anxious than medical situation would explain).

Vital Signs: strong 96 Rate: grossly normal

Head/Neck: No obvious trauma to head, scalp, ears, neck. Airway refill of nail beds prompt (left hand)

Ears: No obv. trauma or blood from canals

Eyes: Pupils mid-position, equal, reactive to light.

Nose: Grossly normal. No evidence of trauma

Mouth: not examined but no blood on lips / teeth

Lungs: good breath sounds all areas

Heart: regular rhythm

Abdomen: no bruises / evidence of trauma. Soft and non-tender.

Anterior Thorax: No evidence of trauma.

Extremities: all normal without evidence of trauma or recent restraints (i.e. indentations / abrasions / bruises at ankles or wrists) except left arm which was bandaged from base of fingers to proximal ⅓ of upper arm. There were also several superficial, clean lacerations on exposed fingers.

Neurological: cranial nerves grossly normal by simple observation.

Cerebellar function: not tested

motor: able to move all extremities on demand.

Assessment: ① Minor injury to left arm

② Anxiety

③ No evidence of altered mental states from medications / drugs.

Enclosure (2)

John M. Carruthers

Exhibit 3

BEST COPY AVAILABLE

Major Hunt's Responses to Senator Simpson's Questions

Senator Simpson: Please provide for the record, the quotations from Dr. Leo Hollister that you did not have an opportunity to read during your oral testimony.

Major Hunt: "For the moment, measurement of plasma concentrations of antipsychotics is an experimental exercise and not of any proven clinical utility." Leo E. Hollister, M.D., is Professor of Medicine and Psychiatry at Stanford University School of Medicine and a senior medical investigator at the Veterans Administration Medical Center in Palo Alto, California. He is clearly accepted in the psychiatry community as a world renowned expert in both basic and clinical psychopharmacology. In an article that he wrote which appeared in the September 1984 issue of The Psychiatric Clinics of North America, he reviewed issues regarding attempts to correlate clinical effects of antipsychotic medications (also known as neuroleptics or major tranquilizers) with measured blood levels of these drugs. These issues were succinctly summarized in the above quotation from that article. The same clearly applies to urine measurements of these medications, both quantitative and qualitative.

The problems involved in attempting to rely on the detection and measurement of this type of medication in either blood or urine are numerous, but again point out the necessity of relying on sound clinical observation. Furthermore, it may be worth nothing that the types of tests in question are not, in fact, routine blood or urine tests, but more sophisticated tests with numerous questions and difficulties involved even in the methodology of detection and measurement, as well as equally elusive difficulties involved in correlation with effects on thought, emotions, and behavior. In the case of Miroslav Medvid, obtaining these additional tests would have merely resulted in unnecessary delay in reaching the answers to the questions at hand, and the ultimate "bottom line" would have still been his observed state of mind, with all of its facets.

Senator Simpson: Could you please discuss the extent to which continued questioning of Mr. Medvid might have led to his having a "manic-depressive illness," and contrast that to your psychiatric report's conclusion that, "however, on 28 and 29 October 1985, the individual was clearly not psychotic and was clearly competent...to make a decision in regards to defection."

Major Hunt: In response to the first part of this question, I refer interested parties to paragraph 26 of my original report, where I summarized the diagnostic implications of Medvid's hypomanic behavior. This behavior was reported in some detail in my original report in paragraph 5 and in paragraph 18-25. Hypomania can be briefly described as a constellation of (1) elevated, expansive, labile, and sometimes irritable mood, associated with (2) excitable and animated behavior, and (3) thought which is congruent with the mood. In hypomania, this constellation is of a lesser degree of severity than would be the case in a manic episode. A manic episode would be one of two presentations of manic-depressive illness, i.e., Bipolar Disorder, manic type. Hypomania, by definition, is not a psychotic disorder although a manic episode often presents with psychotic features.

Due to Medvid's hypomanic features, I specifically proceeded to attempt to rule in or rule out the presence of Bipolar Disorder, manic type. I ultimately concluded that on October 28th and 29th, 1985, he was, in spite of his hypomanic features, not psychotic or in a manic episode. Reference is made to my original report and to the information I have provided regarding what information and examinations were used to reach these conclusions.

It was also necessary, based on sound principles of psychiatry, to consider the various possible explanations of the observed hypomanic behavior. As noted in paragraph 26 of my original report, the weight of the

BEST COPY AVAILABLE

evidence indicated that his hypomanic behavior represented his response, based on personality and characterological features, to his situation. Organic etiologies, such as major metabolic disturbance and hyperthyroidism, post-concussive syndrome, and toxic effects secondary to chemicals and drugs, were ruled out on the basis of an absence of correlating and supportive findings on physical and psychiatric examination. These associated findings were searched for, but were absent. A hypomanic picture can also possibly represent an incomplete expression of a still-evoling Bipolar Disorder, manic type. However, there are no examinations or procedures other than longitudinal observation that could answer this question with certainty.

As a result, I had to consider that even though on October 28th and 29th, 1985, Medvid was not psychotic or in a manic episode, he may, with time, become overtly manic. Based on my conclusions about the etiology of his hypomanic features, I did not see his developing a manic episode as likely, but it couldn't be ruled out. Nevertheless, on October 28th and 29th, 1985, he was clearly competent to make a decision in regards to defection. My original report, paragraphs 2 and 5, elaborated on this. Furthermore, even if his hypomanic behavior had been secondary to other causes or did represent an incomplete form of bipolar disorder, my basic conclusion regarding his competency on October 28th and 29th, 1985, would still hold, as can be illustrated by reference to page 323, Psychiatry and Law, by Ralph Slovenko, LL.B., Ph.D., Professor of Law and Psychiatry. On this page, in reference to the issue of contractual capacity, relevant to the question of Medvid's competency, Dr. Slovenko states, "With rare exception, though, the courts hold the manic-depressive to his contractual obligations since he has the necessary cognitive ability required in law." Furthermore, the apparently administered neuroleptics would have been effective treatment for an evolving manic episode, and would have increased his competence rather than impairing it.

Although I concerned myself with the evolution of a manic episode as a possibility, even though fairly remote, I was more concerned with Medvid's escalating protests and agitation at continued questioning by U.S. officials and about not yet having been returned to his ship, as he had repeatedly and adamantly requested. He had already, on the evening of October 24th and 25th, 1985, demonstrated an agitated, impulsive, physically-resistive, and self-destructive response when his wishes were not realized. Since his thoroughly examined mental capacity rendered him consistently competent on October 28th and 29th, 1985, I could not justify, on psychiatric grounds, keeping Medvid longer, against his stated desire, for further examinational procedures and questioning.

Senator Simpson: You stated in your testimony that, "... to have refused to honor his repeatedly stated desire to return to his ship would have... in my opinion, risked unfavorable international sentiment about the action taken." In your oral testimony, you explained that the issue was one currently being discussed by the international psychiatric community. Could you please elaborate on your concerns about "unfavorable international sentiment?"

Major Hunt: Psychiatry is a profession that must, on ethical grounds integral to the sound practice of medicine, concern itself with the potential in its practice for ignoring and/or abusing basic human rights. As a United States citizen and as an officer in the U.S. Armed Forces, I also concern myself with issues of basic human rights, as outlined in our Constitution. Therefore, I considered Medvid's basic rights, as well as assessing historical and observational data, in deciding that there was no psychiatric basis to further delay honoring his stated desire to return to his ship and the Soviet Union.

Abuses of psychiatry have occurred in all parts of the world, but are considered by many leading international psychiatrists as rampant, even

BEST COPY AVAILABLE

today, in the Soviet Union. Unfavorable international sentiment about Soviet psychiatry is news to few. Articles and letters to the editor routinely appear in Psychiatric News, the newspaper of the American Psychiatric Association, in reference to such abuses and to the current debate regarding whether or not the All Union Society of Psychiatrists and Neuropathologists of the U.S.S.R should be allowed and invited to rejoin the World Psychiatric Association.

As a U.S. citizen, I do get concerned about unfavorable international sentiment towards the U.S. if it is based on real violations of basic human rights. This issue, coupled with the above considerations, is why I did not recommend on Tuesday, October 29, 1985, to detain Medvid for further examinations. This would have been unethical since the basic psychiatric questions bearing on the entire situation had already been adequately answered. My decisions were based on essentially the same ones that allow people to go see doctors but have some choice about undergoing every medical test known to modern man.

To summarize this, let me state categorically that my actions, conclusions, and decisions were motivated by sound psychiatric considerations.

I would also like to note that my statement which forms the basis of this question was part of my testimony on February 5, 1986. I prepared it just several days prior to the Subcommittee's hearing, and the last paragraph was prepared and included in consideration of the fact that the hearing in which I testified was apparently the first in which any of the U.S. personnel on the scene had testified. Therefore, this last paragraph was primarily a retrospective analysis from one eye-witness who had a relatively good vantage point.

Senator Simpson: Could you please state your familiarity with neuroleptic drugs, and any other drugs that may have been used on Mr. Medvid. How often do you encounter patients who are under the influence of such drugs?

Major Hunt: I am extremely familiar with the neuroleptic drugs and daily encounter patients under the influence of this type of drug (or medication). As a practicing clinical psychiatrist, I have encountered literally thousands of patients who are taking neuroleptics. I am very aware of both the subtle and more pronounced effects of these drugs. I am also versed with their clinical indications, including but not limited to schizophrenia, other psychotic conditions and severe agitation with or without psychosis. I have participated in basic and clinical research projects dealing with various effects of this type of medication. I also deal on a regular basis with all types of substances that have expectable, or even idiosyncratic, psychoactive effects. The application of my knowledge and familiarity with such substances was involved in reviewing available historical data, obtaining specific informational data from both the physical and psychiatric exams and in reaching my conclusions. As noted in paragraph 2 of my original report, "... There was no evidence suggestive of any ongoing, significant organic mental disorder, including substance-induced intoxication, that would have impaired his competence." With my extensive knowledge in clinical psychopharmacology, I also clearly know that at this point in time, there are no known pharmacologic "magic bullets" that could have produced the clinical picture I observed along with any hypothesized "submission by Medvid, against his will, to the wishes or demands of the other Soviets."

Senator Simpson: Please describe the tests or examinations that you performed on Medvid to determine if he were under the influence of drugs, and the results of these tests or examinations. You stated in your oral testimony that a blood test or urinalysis was not necessary, in Medvid's case, to determine if he were under the influence of drugs. Why were these tests not necessary?

BEST COPY AVAILABLE

Major Hunt: The tests and examinations performed on Medvid to determine if he were under the influence of drugs included a brief physical assessment performed by Dr. Carruthers on board the Soviet ship on the 26th of October 1985, a more thorough physical examination performed by Dr. Carruthers at a Naval facility in New Orleans on the late evening of October 28th, 1985 and a clinical psychiatric examination performed by me during the 28th and 29th of October 1985. The clinical psychiatric examination included the data from various observations and specific testing to assess all of the basic elements involved in determining someone's mental state. It should further be noted that the clinical examination is the cornerstone of diagnostic medicine, including psychiatry, and that laboratory studies and examinations are considered ancillary procedures. I would further like to point out that the psychiatric interview and examination can, in skilled hands, yield a wealth of information. Reference to any modern, standard textbook of medicine or psychiatary will further reiterate these facts in spite of the advances, sometimes held belief that the laboratory is all-important.

The clinical assessment that I made, with the data derived from it, was very adequate in ruling out any drug induced impairment of Medivid's competence. This includes not only possible impairment secondary to the drugs reportedly administered Medvid on Friday, the 25th of October 1985, but also includes any possible impairment secondary to all other classes of psychoactive substances, such as stimulants, hallucinogens, solvents, analgesics and sedatives, including minor tranquilizers, anti-anxiety drugs and sleeping pills. I can confidently state this, based on having looked for, yet there having been an absence of, any clinical picture consistent with such drug-induced impairments. Although I personally did not perform a complete physical examination, I did consult with Dr. Carruthers prior to the physical examination that he performed on Medvid Monday evening, the 28th of October 1985. The purpose of this consultation was to specifically clarify various physical findings to look for on the upcoming physical examination that would have related to possible drug effects. Additionally, in conjunction with Dr. Carruthers' physical examination, I did perform several additional clinical neurologic tests, to look for specific clinical signs that would have related to possible drug effects.

It should be noted that the examinations I performed involved significant periods of very close direct observation of Medvid. My information was collected over roughly an 18 hour period providing the advantage of some longitudinal observations. Additionally, at numerous intervals during this process, I reevaluated the information I had available at that point to clarify for myself what additional information was necessary to complete my consultation. I, also in this process, considered numerous hypotheses that the data suggested. When necessary, I obtained additional information to further evaluate these various hypotheses. In this process of considering and weighing various hypotheses, I also gave specific consideration to issues of differential diagnosis, i.e., various diagnostic possibilities that might explain the data. I then made lists of additional information necessary to rule in or rule out various diagnostic possibilities. Diagnostic possibilities that I specifically considered definitely did include possible organic impairment of his mental state, including impairment secondary to psychoactice dynamic process, that relied on lengthy, direct observations, coupled with good psychiatric observational skills and a good background in what to look for.

In my response to this question dealing with "tests and examinations," it may be worth pointing out that the purpose of any test or examination is to gather relevant data. In addition to the method of data collection that I have described above, I obtained additional significant data by more indirect means. Although more indirect, this additional information was helpful in my total assessment. Paragraph 9 of my original report notes many of the

BEST COPY AVAILABLE

sources of this indirect data. Additionally, I attempted to discuss the situation at length with any of the U.S. personnel on the scene that had prior information of relevance. Basically, my attempt was to gather as much information as possible from as many sources as were available, to paint a complete enough picture of his mental state to determine his competency to make a decision regarding defection. In this particular situation, no ancillary laboratory or other diagnostic procedures other than those utilized were necessary to make the necessary determinations. In testimony before the Senate Subcommittee, I noted that there was information that was unknown in regards to Medvid's medical status, with the specific example of not knowing his blood type. To carry this example further, let me say that yes, knowing his blood type would have painted a more complete picture, but would certainly not have changed the picture in regards to the basic questions at hand. In a very similar fashion, with the information that was available, any blood or urine tests that could have been performed would not have changed the basic conclusions in regards to his competency to make a decision for himself in regards to defection. It is a general principle in medicine to weigh out the value of tests along with any adverse effects of additional testing. The mere presence of neuroleptics would not have rendered Medvid incompetent, and the delays involved in obtaining the results of this type of test was not justified when considering his adamant desire to return to his ship and extremely limited relevance of the test results. The information I provided earlier should also help clarify the reasons why blood or urine measurements of neuroleptics were not relevant to the basic questions. To reiterate, it isn't posible in 1986 to correlate blood or urine levels of such substances with either pharmacologic or clinical effects to any meaningful degree and as a result, clinical assessment is paramount. Furthermore, Medvid's presentation, as assessed with my skills, defied the presence of neuroleptics to such a degree that would have impaired his competence to make a rational decision in regards to defection.

Blood and urine levels for certain other types of psychoactive substances, however, can be better correlated with pharmacologic and clinical effects; but again, the clinical evidence in this situation was very adequate to rule out any such potential drug induced impairment of his mental state that would have compromised his basic competence.

The results of a psychiataric examination are usually presented in a format different than I chose to use in my original report, As I stated in my oral testimony before the Subcommittee, I elected to alter the format of my report for specific reasons. However, to more fully answer the question raised about what specific examinations and tests I performed and the results of these tests, I will now present the relevant data obtained from the examination process in one of several standard formats used for a psychiatric report. The subsections include:

EXAMINATIONAL PROCEDURES AND EXAMINERS:
I. BEHAVIOR AND APPEARANCE AND ATTITUDE TOWARD THE EXAMINATIONAL PROCEDURES AND EXAMINERS:
II. PERCEPTION
III. COGNITION (THOUGHT PROCESSES):
IV AFFECT:
V. BEHAVIOR
VI. DATA OBTAINED FROM THE PHYSICAL EXAM AND NEUROLOGIC ASSESSMENT (Relevant to Medvid's Neuropsychiatric Status and the Ultimate Question of Competence):

Data specifically elicited and noted for the purposes of assessment of any ongoing organic, including substance-induced effects or impairment is included in the six sections. To include all such relevant information in one section would be a deviation from a standard psychiatric report format. However, the information obtained during my examinational process with

BEST COPY AVAILABLE

Medvid, as contained in the above six sections, was adequate in ruling out the presence of any ongoing organic or other process that impaired his competence to make a decision in regards to defection.

I. BEHAVIOR AND APPEARANCE AND ATTITUDE TOWARD THE EXAMINATIONAL PROCEDURES AND EXAMINERS: Medvid was neatly dressed and groomed. There was nothing unusual about his clothing. Left arm was in a sling, and he, several times over the two day period, complained of some soreness of his left hand and wrist, but when this issue was pursued, he routinely dismissed it as only minor. There was nothing abnormal, unusual, or bizarre about his posture. Expressions covered a normal range, with no mask-like faces noted. Facial expressions did not suggest anxiety, fear, apprehensiveness, sadness, depression, despair, perplexity, innappropriateness or bizarreness. Dominant facial expressions did however, suggest mild euphoria, occasional silliness and jocularity, and at times anger and hostility, associated with significant contraction of his jaw muscles. Attitude towards me, the interviewer, was initially congenial, but this changed after I began inquiring into events that occurred during the period of his alleged amnesia and the issue of "falling versus jumping." He then became more guarded and antagonistic towards me. He approached my second interview on October 29th, 1985 with a more guarded stance, with both apparent and verbalized suspicion of my intentions and motivations. At one point in the second interview he expressed that he felt I was attempting to make him look like a fool. He became progressively more uncooperative and resistant, associated with a strong competitive stance toward the examiner. He insisted on the presence of the Soviet doctor during both interviews, and he several times appeared momentarily uncomfortable when I raised questions related to various inconsistencies that I noted. These inconsistencies dealt with his initial motivation of jumping, versus his allegation of falling, and his alleged amnesia. I also wondered with him about his fluctuations in mood. I pointed out that the Soviet doctor had told me had had been depressed after being returned to his ship, but yet he was now apparently very pleased to be back with the other Soviets. He reiterated his claim of amnesia and became more overtly angry, refusing to answer further. There was, however, no perplexity or bewilderment when confronted with issues of his alleged amnesia, and no demonstrated motivation to regain the "lost memories" (highly unusual for someone suffering from organically-based or psychogenic amnesia). He also made numerous attempts to convince the examiner of his own mental sharpness and physical stature and generally good health.

II. PERCEPTION: Medvid had no relevant or significant impairment of his basic sensory functions, including sight and sound. He denied hallucinations, and there was no evidence of them. Likewise, there was no evidence of the presence of illusions or other perceptual disturbance or distortion. In spite of his hypomanic features, he actively attended to his surroundings and was even somewhat hypervigilant, with this hypervigilance clearly being in reference to the U.S. personnel present. He expressed no difficulty understading or comprehending what was being said to him, and he demonstrated a similar normal ability for accurate appreciation of written material. Observational data clearly indicated an absence of either auditory, tactile or visual agnosias. He was fully oriented to person, place, time and situation.

III. COGNITION: Medvid's estimated intelligence was average to moderately above average with a corresponding fund of general information. His concentration was consistently good, and he performed serial subtractions and other calculations quickly and accurately. His memory functions were intact, including assessment of immediate and short-term memory function and long-term memory, with the exception of his alleged amnesia for the period of time from hitting the water until waking up back on his ship. (This alleged, circumscribed anterograde amnesia without any associated perplexity, bewilderment, or motivation to regain the memories is inconsistent with any etiology of any documented, purposeful activity, with

none of the eye-witnesses noting any bewilderment, perplexity, or confusion during the period of his alleged amnesia, also speaks strongly to the alleged amnesia being merely fabricated.) Examinations through several types of standard psychiatric questions, including proverbs and similarities, along with close scrutiny of his language, indicated relatively few abnormalities of both his thought processes and thought content. There was no thought blocking, tangentiality, autistic speech or loosening of associations. There was no consistent circumstantiality, although he did give very specific detail in describing the events just prior to his "falling" from his ship. Responses to proverbs and similarities clearly indicated an ability for categorical abstract thinking, although he did give several refusals to these questions, consistent with his defensiveness, hostility, and competitiveness toward the examiner. One response to a similarity also indicated an impulsive quality to his thinking. A mildly overelaborate quality to his speech was noted, with possible mild to moderate flight of ideas, with one or two noted clang associations. However, these clang associations were nonsensical in nature, and during the entire period of observation, there was no irrational or bizarre thought content demonstrated. There was no evidence of paranoid or nihilistic delusions. He was somewhat suspicious of the Americans present but not to delusional proportions, when cultural issues and the context of the situation are considered. Although he was somewhat grandiose in his attitude towards himself, upon very specific questioning I was able to rule out the presence of grandiose delusions. The rate of his speech was never abnormally decreased, but intermittently became progressively and abnormally rapid, and when noted was associated with some language slippage. This phenomenon was also associated with a congruent, more animated affect. This phenomena is fairly common in bilingual individuals.

Medvid's thought content consistently focused around his stated desire to return to his ship and to the Soviet Union. He also expressed many thoughts generally derogatory towards the United States or accusing the Americans present of holding him against his will. Several times in describing his reasons for wishing to return to his ship and the Soviet Union, he presented a logical explanation for his desire and in this process, he demonstrated an ability for some integrative thinking. He repeatedly alluded to wanting to see his family again and to the paramount importance of "mama and papa."

He professed no insight into his original motivation for jumping from his ship, to the point of denying the initial motivation to jump his ship. In regards to his insight into his situation on October 28th and October 29th, 1985, he repeatedly stated that essentially his only problem was the Americans not leaving him alone, to return to his ship. His repeated references to "mama and papa" in association with his desire to return to the Soviet Union was assessed as demonstrating good insight into the overall situation. Medvid demonstrated what I interpreted to be a somewhat inapropriate social judgement, in that he appeared overly "chummy" with the other Soviets. This was further assessed to be congruent with his hypomanic features and basic attitudes towards the Soviets and Americans present, and related to some mild disinhibition of thought and behavior. For example, he made several psychologically primitive sexual references.

IV. AFFECT: Medvid's predominant mood was expansive, jocular and euphoric, but with occasional, abrupt changes to agitation, resentment and defensiveness towards the Americans. His affect was generally animated and flamboyant, but was also labile. His affect was congruent with his thought content and was likewise congruent with his level of motor activity.

V. BEHAVIOR: There was no psychomotor retardation noted, with no decrease in spontaneous motor movements. Likewise, there was no fidgeting, pacing or motor restlessness that would have suggested akathisia, a relatively common side effect of neuroleptics. There were no bizarre mannerisms or

BEST COPY AVAILABLE

postures, with an absence of echolalia and echopraxia. Activity level was mildly increased, but he did express, late in the evening of the 28th of October, that he was tired, and he appeared to be getting tired. Observation of his behavior over a long period of time indicated no findings which would be consistent with anxiety such as fidgeting, deep sighing or hyperventilation. Activity level was increasd, but his behavior never became disorganized or random. Furthermore, his behavior remained consistent with his stated intent and desires and he on numerous occasions personally insisted on not being alone in the presence of the Americans. There was a clear and consistent impulsive quality to his behavior, as well as his thinking, but this impulsivity never significantly interfered in his focusing of his stated desire of returning to his ship. The impulsivity was illustrated at numerous points in my original report, including several sexually related gestures, and his quick reaction to several of my confrontations, to the extent that he over-rode the top Soviet official present regarding his personal refusal at several points to continue the second interview. When he became visibly angry, he, in association, stormed out of the room on two occasions.

VI. DATA OBTAINED FROM THE PHYSICAL EXAM AND NEUROLOGIC ASSESSMENT (Relevant to Medvid's Neuropsychiatric Status and the Ultimate Question of Competence): Medvid appeared his stated age, having brown hair with a receding hairline, and blue eyes. He was fully alert, with no evidence of sensorial impairment, and there was an absence of abnormal fluctuations in his level of consciousness. Though I did not personally measure his height or weight, my estimate of this would be 5 feet, 9 inches to 5 feet, 10 inches, 165 to 175 pounds with a mesomorphic body habitus. He was in no apparent significant physical distress although as noted previously, he did several times complain of slight tenderness of the left wrist and hand. At approximately 4 p.m. on October 26th, 1985, his pulse was strong with a rate of 96 per minute. On the late evening of October 28th, 1985, his pulse rate was 84 per minute. Pressure at that time was 130/88, with respirations of 18 per minute with no respiratory distress. Thorough examination of the face and cranium, both by Dr. Carruthers and by me indicated no evidence of recent trauma, with no deep bruises or contusions and no evidence of fractures. However, there was noted an old, well-healed small scar on the mid-forhead. Eye examination indicated pupils that were equal in size, round and reactive to light. There was no miosis or mydriasis. Extraocular movements were intact with no nystagmus detected, in spite of specific observation for this clinical sign. The oral mucosa was well hydrated and not excessively dry. There was no evidence suggestive of autonomic instability.

Neurologic assessment indicated an entirely normal gait and station. There was good motor strength diffusely, with normal muscle tone, with no evidence of cogwheeling or rigidity. As previously noted there was no decrease in spontaneous motor movement. There was no evidence of sedation or other forms of altered state of consciousness. His speech was spontaneous with the other Soviets and State Department-provided interpreter having no apparent difficulty understanding his verbal speech. Deep tendon reflexes were normal and equal bilaterally. He was right handed. Basic sensory functions were tested and were within normal limits. Frontal release signs were specifically tested, but there was an absence of such signs. Two point extinction was also tested, with a normal response. Normal cerebellar function was clearly demonstrated by lengthy observation of his motor behavior. Likewise, there was an absence of apraxias.

It should be noted that in covering certain relevant information in Section VI, I did not repeat all of the physical findings reported in Dr. Carruthers' physical assessment and more thorough physical exam. However, it should be noted that I was present for the entire physical exam conducted by Dr. Carruthers during the late evening of October 28th, 1985, and it should be noted that the laceration on the left wrist was directly observed by Dr.

BEST COPY AVAILABLE

Carruthers and myself, and that the physical examination was conducted with the patient being fully exposed with the exception of underwear. The information that I have included in Section I - VI of this "report," represents information that I specifically considered and noted at the time of my involvement with Medvid. There, however, was additional data available to me of significance, other than covered in Sections I - VI. This information included a past history of a sports-related accident with an unknown period of unconsciousness at the age of approximately 10 or 11, with a history reported by Medvid of occasional intermittent headaches times many years, and a complaint upon specific questioning of nasal congestion, a slight cough, and slight sore throat for 2 to 3 days prior to October 28th, 1985.

One could suppose that Medvid's hypomanic features were secondary to stimulant type of drugs; however, this hypothesis would not be consistent with the observation of no adrenergic hyperactivity. Furthermore, the effects of such stimulants would not have induced Medvid to merely comply with the other Soviets' wishes against his own will. Similarly, any hypothesis that presumes that Medvid's true will was subdued as a result of the effects of any administered sedatives would have to be discounted due to the absence of any significant sedation, which would have been present to a noticeable degree to simultaneously have had an effect on his will or motivation. At lower doses, both sedatives and stimulants could be expected to cause disinhibition, with a resultant increased demonstration of his true will. The presence of solvents and hallucinagens can similarly be ruled out as possible factors impairing Medvid's competence, secondary to the absence of examinational data that would have been detected by the procedures and methods that Dr. Carruthers and I utilized. Neuroleptics, or major tranquilizers, were most likely given to Medvid after he was initially returned to his ship and apparently slashed his left wrist. However, on very careful and expert scrutiny, associated pharmacological effects from this type of medication were not demonstrable on October 28th and 29th, 1985. Any hypothesis that suggest that Medvid was "tamed into submission" must be based on either incomplete understanding of the effects of neuroleptics, or upon total disregard for my direct observational data. The effects of neuroleptics would rarely, if ever, render an individual incompetent short of the neuroleptic producing significant sedation, which again, was clearly not present.

I will finally point out that in clinical medicine and psychiatry the value of any single piece of data , including observational data, data from physical exam, or results from ancillary procedures including laboratory tests, is dependent on the result's sensitivity and specificity. Each individual piece of information has less than ideal sensitivity and specificity. However, the examinational process which I employed was adequate to reach my conclusions with a high level of both sensitivity and specificity in regards to my final conclusions. Any additional studies including blood or urine tests would have added essentially nothing to the sensitivity and specificity of my conclusions, in regards to Medvid's competence to make a decision in regards to defection on the 28th and 29th of October 1985.

Senator Simpson: I believe you are familiar with Dr. William E. O'Malley's testimony before the Senate Agriculture Committee. He criticized the following conclusions of your psychiatric report: 1) Medvid's initial defection attempt was "based primarily on a rather impulsive decision," 2) there was "no evidence suggestive of any ongoing significant organic mental disorder, including substance-induced intoxication, that would have impaired his competency," and 3) Medvid was "clearly competent" in making his decision to return to the Soviet Union. Dr. O'Malley claims that your report "did not meet the minimal professional standards that one would expect of this kind of examination." How do you respond to these criticisms?

BEST COPY AVAILABLE

Major Hunt: Dr. O'Malley's criticisms have no foundation. In his testimony, Dr. O'Malley stated that he was "Board-qualified in Neurology and Psychiatry." To some this may sound impressive. However, this statement also indicates to the more informed that Dr. O'Malley is not board certified in Psychiatry or Neurology. In other words, he has not been designated a specialist in the area of Psychiatry or Neurology by the American Board of Psychiatry or Neurology. The statement furthermore indicates that he has either not taken, or has not passed his board certification exams. He also states in his testimony that for the past 15 years he has held various positions in the U.S. pharmaceutical industry. I have questions about how many patients he has seen in the past 15 years, and about his activity in the field of clinical psychiatry in the past 15 years.

It seems from reading Dr. O'Malley's testimony that he based his criticisms on a review of two reports, "the report of the U.S. Air Force psychiatrist" and that of a Navy physician who "also carried out a routine, very limited physical examination." Adding to this impression is the fact that my original report, along with a transcript of Dr. Carruthers' handwritten note (from October 26th, 1985, recording the findings of his brief physical assessment) were printed along with Dr. O'Malley's testimony in the Congressional Record. However, it should be noted that the State Department released three medical reports, including my original report, the transcript from Dr. Carruthers' brief physical assessment and a copy of a more extensive physical examination that Dr. Carruthers performed in my presence in the late evening of October 28th, 1985. Furthermore, close review of Dr. O'Malley's testimony indicates that he had access to all three reports also. This is a reasonable deduction after noting that in Dr. O'Malley's testimony there are at least 3 references to information that was only contained in the third medical report. However, the third report was not included in the Congressional Record or directly referred to by Dr. O'Malley. In spite of his 3 references to material, in the third report, he at other points criticizes our reports' methods and conclusions, based on information he claimed we "omitted," but which did, in fact, appear in the third report. Dr. O'Malley made statements, used as support for his criticisms, that had no basis in reality. For example, Dr. O'Malley stated in his testimony that Medvid strongly resisted the ship's security, personnel "who beat him up." However, review of the statements by American eyewitnesses indicate that although physically restrained, Medvid was not beaten up. At another point, Dr. O'Malley stated, "I find it very curious that none of the doctors examining Mr. Medvid attempted to remove his bandage." In the next paragraph, he states, "However, the Air Force psychiatrist does note that a cut on the left wrist that was large enough and deep enough to require three sutures." I find it curious how Dr. O'Malley presumes that I noted the three sutures without removing the bandage? Although Dr. Carruthers and I both directly observed the wrist laceration, Dr. O'Malley incorrectly attributed the notation regarding the"cut on the left wrist" to my report, when it was actually noted in one of the Navy doctor's reports.

In supporting his criticism of my conclusion that Medvid's initial defection attempt was "based primarily on a rather impulsive decision," Dr. O'Malley points out Medvid's goal-directed, purposeful behavior that was involved in his initial defection. However, he fails to consider the fact that goal-directed behavior is impulsive when the goal is sought after without adequate consideration for other facets of reality such as likely consequences. Goal-directed action can still represent impulsive behavior if based on the "pleasure principle" at the expense of the "reality principle" is an indication of some impairment in ego functioning, i.e., immaturity. In the situation with Medvid I had adequate information available to me to make the assessment of a young man with a rather immature personality (fairly common in young males of Medvid's age), who had not adequately, prior to

BEST COPY AVAILABLE

jumping, considered such issues as permanent separation from his family and their fate. I had further support for my conclusion based on a history of several potential organic factors from childhood that could have contributed to this impulsive tendency. These factors, attention deficit disorder with hyperactivity and an organic affective or personality syndrome (secondary to a concussion sustained in youth) were mentioned in my original report. I also had information from direct observational data, including his responses to mental status questions, observed generally sensation-seeking, action-oriented personality style, consistent with a predisposition to impulsive, not thoroughly though out behavior. My conclusions of the impulsive aspects of his initial attempt at defection also fit well with the facts regarding how this whole situation unfolded with its many facets and complexities. It is maybe unfortunate that the Soviets had an opportunity to point out some of the "realities" of Medvid's and his family's situation, but the facts are that they did have this opportunity "to reinforce the reality principle over the more impulsive pleasure principle."

In making the assessement of his impulsivity, I concluded that Medvid did not initially attempt to defect for primarily deep political or moral reasons, rather out of an impulsive, sensation-seeking, "pleasure principle" motivation. My conclusions do not preclude the fact that Medvid stated to the initial interpretor that he wanted to defect for political and moral reasons, and that he wanted an honest country. It is common understanding among experienced psychiatrists that individuals with immature personalities often become discontent with their situations, tend to blame others for it, and act out their discontent in association with themselves, others, and their environment in problematic ways without adequate consideration for the consequences. Although Medvid could have potentially jumped for deep seated political and moral reasons, the weight of the evidence strongly supports otherwise. Also Medvid's moderately above average intelligence was noted, which would have made it more likely for Medvid to have made these statements, yet his basic desire to defect being for other reasons. He certainly knew "the right things to say" when playing out the Soviet game plan on October 28th and 29th, 1985. Furthermore, if his initial motivation for jumping had been for well thought out, deep seated political or moral concerns, he would have been less vulnerable to Soviet reminders about family. A mature person would have considered such factors and weighed them out prior to jumping.

To support his criticism of my conclusions that Medvid was not adversely under the influence of any drugs, Dr. O'Malley makes reference to the "casual observer." I would like to point out that in this situation I was not the average casual observer. I am very aware of the properties and actions, both subtle and more dramatic, of the neuroleptics. My knowledge of this type of drug leads me to disagree with Dr. O'Malley's statements that "for reasons we do not fully understand, the drugs act selectively in those areas of the brain which control the affective functions." Neuroleptics have actions on areas of the brain involved in thought, behavior, and emotion, but have other less selective effects in addition, which are of clinical signficance.

Neuroleptic drugs can fairly often produce dyskinesias and other movement disorders, including some of which are very similar and intimately related with Parkinson's Disease, of which Dr. O'Malley referred in an earlier part of his testimony. Medvid had no signs of any of these common movement disorders encountered with the use of neuroleptics. The neuroleptics that have the least potential for this type of side effect are alternatively, the most sedating. To achieve a therapeutic effect in regards to controlling agitated behavior or such symptoms as hallucinations, dosages are often high enough to produce significant, clinically observable sedation and/or other side effects, including postural hypotension, tachycardia, dry oral mucosa, dilated pupils, abnormalities of extraocular movements, stiff posture, somewhat slowed mechanical-like motor movements, tremor, mask-

BEST COPY AVAILABLE

like faces and blurry vision, making reading difficult. Medvid demonstrated none of these features. Dr. O'Malley further incorrectly assumed that the Soviet doctor stayed the night of October 28th and 29th with Medvid. The Soviet doctor was present for the interviews and examinations, but did not spend the night with Medvid and Medvid's time alone with any of the other Soviets, without the presence of Americans, was negligible and inadequate for Medvid to have been given medication. Dr. O'Malley further criticized my second conclusion by selectively considering or omitting, information that was available to him in the third report. Dr. O'Malley also criticized my second conclusion on the basis of not having done an EEG or obtained blood or urine samples. These tests would have, indeed, yielded information, but not information that was really necessary for the questions at hand. Similar to my decision to not obtain an EEG or blood or urine samples, I chose not to drain Medvid's entire blood supply to basically know his blood volume. With no significant index of suspicion for organic impairment, based on the findings of extensive examination, for me to have insisted on an EEG or the delays involved in obtaining very specialized blood and urine determinations would have been almost as absurd.

Dr. O'Malley's criticism of my third conclusion is simply without foundation. He misrepresented the true nature of the physical findings in regards to the superficial laceration of the left wrist, several superficial clean lacerations on the exposed fingers of the left hand, and several ecchymotic areas on the right arm. The superficial lacerations on the fingers of the left hand were not, according to Dr. Carruthers, at all suggestive of the type of lacerations that would have been inflicted through torture. Rather, these were extremely superficial lacerations that would not have affected pain fibers. The noted ecchymotic areas were not at all suggestive of beating. To further illustrate, let me note that the types of bruises we noted would never be the type of evidence to substantiate child abuse, for example. Dr. O'Malley incorrectly assumed, or believed, that Medvid had been physically tortured or beaten but the true findings did not support such beliefs or assumptions. As a result, Dr. O'Malley's conclusion regarding the inaccuracy of my assessment of Medvid's competency, is without any real basis.

In the conclusion of Dr. O'Malley's testimony, he attributed several conclusions to me that are simply not accurate deductions from the true content of my original report. In regards to the issue of sanity, Medvid was legally sane both when he initially attempted to defect and when he made the decision to return to his ship and the Soviet Union. In regards to the concept of personal responsibility, again, it can be stated that a court of law would likely have held Medvid legally responsible for both actions, initial defection attempt and his later decision to return to his ship. Rather than Dr. O'Malley's conclusion, it is more accurate to conclude that Medvid succumbed to the pressure of the "reality principle" in that the reality of the situation was that the Soviet Union would continue to have influence over his family if he chose to defect. Ultimately, that was the price Medvid was not willing to pay, particularly when the other Soviets gave him a way out by "playing the game right." Although I assessed Medvid to be rather immature, I felt that on psychiatric grounds, his decision was to be respected as that of a man of essentially sound enough mind to make that type of decision for himself.

I would further like to qualify that my conclusions in no way give approval to certain "realities" of the Soviet system, but my lack of approval doesn't change these realities. Medvid was also apparently aware of these realities, such as the likely consequences to his family if he had, when given the second opportunity, chosen to defect.

BEST COPY AVAILABLE

Senator Simpson: How much time did you spend in close proximity with Mr. Medvid?

Major Hunt: As stated in my original report, I spent approximately 6 to 8 hours in close proximity to Medvid. This 6 to 8 hour accumulated period of time was with direct eye contact and within a distance of 20 feet of Medvid.

Senator Simpson: Attached is a picture of Medvid taken by Border Patrol agents during Medvid's first interview, which was also attatched to the report of these agents (Spurlock and Bashaw). Can you positively identify this man as the same man you examined on October 28 and October 29, 1985?

Major Hunt: Yes, I can positively identify this man in the picture taken of Medvid by the Border Patrol agents as the same man that I examined on October 28th and 29th, 1985. I have no doubt whatsoever about this conclusion. I would note, however, that on the morning of October 29th, 1985, he did shave his mustache off.

MAJOR HUNT'S RESPONSES TO SENATOR DENTON'S QUESTIONS

Senator Denton: In your psychiatric report, what did you mean by the statement that Medvid was "as competent as basically any Soviet citizen to make a decision in regards to the issue of defection?" On what did you base that comparison?

Major Hunt: This statement was qualified with the phrase "as basically any Soviet citizen" in consideration of one of the basic realities of human existence, namely family, that virtually any Soviet citizen would have had to consider. Medvid responded to one of the realities of his situation, in that the Soviet Union would continue to have influence over his family and Medvid seeing his family if he did choose to defect. He possessed the necessary mental faculties to understand his situation, make a choice for himself, and to communicate his choice. We may not appreciate or agree with some of the realities of the Soviet system, but it is hard to deny that the Soviet system would have continued to have had influence over Medvid's family if he had chosen to defect when given the second opportunity.

Senator Denton: In paragraph 2 of your report, you state that there was an "absence of psychosis" in Medvid's behavior. In your testimony this morning, you expressed your belief that to fail to act on Medvid's repeatedly stated desire to return to his ship and his country would have resulted in development of a "full blown psychosis" requiring hospitalization. I am not a psychiatrist and am not familiar with some of the terms that you have used here. Perhaps you could explain what you mean and how, in your opinion, Medvid could go from the absence of psychosis to a state of full blown psychosis requiring hospitalization?

Major Hunt: Psychosis is defined in Dorland's Medical Dictionary as "A general term for any major mental disorder of organic and/or emotional origin characterized by derangement of the personality and loss of contact with reality, often with delusions, hallucinations, or illusions." A delusion can be briefly defined as a fixed, false belief. A common delusion is the belief that one is capable of superhuman feats, such as reading minds, flying to Mars, etc. Hallucinations can be briefly defined as perceptions of external objects in the absence of such objects. For example, hearing voices in the absence of anyone speaking may represent an auditory hallucination. Similarly, seeing people in the absence of any people in one's visual field is an

BEST COPY AVAILABLE

example of a visual hallucination. An illusion is a markedly distorted perception, such as one looking at a belt, but perceiving instead a snake.

The presence of psychosis can render a person incompetent. However, Medvid was not psychotic. Other situations and conditions could also render a person incompetent, such as total deafness and blindness, marked intellectual deficiency, stupor or coma, or intoxication. However, as I noted in paragraph 2 of my original report, there was an absence of any condition that would have rendered Medvid incomptetent. He was consistently fully alert and he was oriented, in that he knew who he was, where he was, why he was there, and he demonstrated good orientation to time. He demonstrated good ability to communicate both oral and written language, and his speech was easily understood by those present, both Americans and Soviets, who spoke the same languages as he. He demonstrated no sensory-perceptual impairment or distortion, such as deafness, blindness, illusions or hallucinations. He was assessed to be of average to moderately above average intelligence, with clearly no evidence of intellectual deficiency. He demonstrated and communicated very directly that he understood his basic choices, and he consistently and directly communicated his choice, to return to his ship and the Soviet Union.

It was also necessary, based on sound principles of psychiatry, to consider the various possible explanations of the observed hypomanic behavior. As noted in paragraph 26 of my original report, the weight of the evidence indicated that his hypomanic behavior represented his response, based on personality and characterological features, to his situation. Organic etiologies, such as major metbolic disturbance and hyperthyrodidism, post-concussive syndrome, and toxic effects secondary to chemicals and drugs, were ruled out on the basis of an absence of correlating and supportive findings on physical and psychiatric examination. These associated findings were searched for, but were absent. A hypomanic picture can also possibly represent an incomplete expression of a still-evolving Bipolar Disorder, manic type. However, there are no examinations or procedures other than longitudinal observation that could answer this question with certainty.

As a result, I had to consider that even though on October 28th and 29th, 1985, Medvid was not psychotic nor in a manic episode, he may, with time, become overtly manic. based on my conclusions about the etiology of his hypomanic features, I did not see his developing a manic episode as likely, but it couldn't be ruled out. Nevertheless, on October 28th and 29th, 1985, he was clearly competent to make a decision in regards to defection. My original report, paragraphs 2 and 5, elaborated on this. Furthermore, even if his hypomanic behavior had been secondary to other causes or did represent an incomplete form of bipolar disorder, my basic conclusion regarding his competency on October 28th and 29th, 1985 would still hold, as can be illustrated by reference to page 323, Psychiatry and Law, by Ralph Slovenko, LL.B., Ph. D., Professor of Law and Psychiatry. On this page, in reference to the issue of contractual capacity, relevant to the question of Medvid's competency, Dr. Slovenko states, "With rare exception, though, the courts hold the manic-depressive to his contractual obligation since he has the necessary cognitive ability required in law." Furthermore, the apparently administered neuroleptics would have been effective treatment for an evolving manic episode, and would have increased his competence rather than impairing it.

Although I concerned myself with the evolution of a manic episode as a possiblity, even though fairly remote I was more concerned with Medvid's escalating protests and agitation at continued questioning by U.S. officials and about not yet having been returned to his ship, as he had repeatedly and adamtly requested. He had already, on the evening of October 24th and 25th, 1985, demonstrated an agitated impulsive, and physically-resistive response when his wishes were not realized. Since his thoroughly examined mental

BEST COPY AVAILABLE

capacity rendered him consistently competent on October 28th and 29th, 1985, I could not justify, on psychiatric grounds, keeping Medvid longer, against his stated desire, for further examinational procedures and questioning.

Senator Denton: You suggested that Medvid's decision to "jump ship and seek political asylum" was "rather impulsive." On what do you base this assessment?

Major Hunt: My examination involved an ongoing, dynamic process, that relied on lengthy, direct observations, coupled with good psychiatric observational skills and a good background in what to look for. The examinations I performed involved significant periods of very close direct observation of Medvid. My information was collected over roughly an 18 hour period providing the advantage of some longitudinal observations. Additionally, at numerous intervals during this process, I reevaluated the information I had available at that point to clarify for myself what additional information was necessary to complete my consultation. I, also in this process, considered numerous hypotheses that the data suggested. When necessary, I obtained additional information to further evaluate these various hypotheses. In this process of considering and weighing various hypotheses, I also gave specific consideration to issues of differential diagnosis, i.e., various diagnostic possibilities that might explain the data. I then made lists of additional information necessary to rule in or rule out various diagnostic possibilities.

Thorough assessment of this individual, taking into account all available information, which was rather extensive, indicated numerous features consistent with a basic personality that included flamboyant, sensation-seeking behaviours, a predisposition to rapid and intense mood swings as well as impulsivity. DSM III, the diagnostic manual for psychiatry in the U.S., describes three broad subgroups or clusters of personality disorders. Medvid had numerous features consistent with the "dramatic" cluster of personality disorders which include histrionic, narcissitic, anti-social and borderline personalities. Although I would hesitate to make a final decision regarding a formal diagnosis of a personality disorder, Medvid certainly had features of this subgroup. Although problematic and not representing ideal maturity, this personality style did not render him incompetent. Further reference is made to an article by Klar and Siever, in the Psychiatric Clinics of North America, December 1984 and an article by Rifkin in the Journal of Biological Psychiatry, 1972.

Past history, available from several sources, fits with assessing Medvid as rather impulsive and sensation-seeking. His suicidal gesture/attempt was another indication of his agitation, predisposition to intense mood swings and impulsivity, even when one considers from a psychiatric point of view his situation at the time.

Later on in the scenario, with no evidence to support a hypothesis of physical torture by the Soviets, he made a dramatic turn in his desires in regards to defection, and he made numerous references about wanting to return to the Soviet Union to once again see his family.

Ambivalence about leaving one's country and family is very commonly reported in individuals who have defected. However, many who have made the decision to defect have in advance reflected on and resolved for themselves feelings about leaving their family and feelings about the fate of their family, even considering adverse effects on family.

It is typical, however, for a basically impulsive individual to first act, based on "the pleasure principle," and to often only afterwards start dealing with the various implications and consequences of their behavior. If Medvid had, in advance of his jumping, thoroughly thought through the likely consequences of his action in regards to family, he would have been less vulnerable to the Soviets pressures after being returned to his ship.

BEST COPY AVAILABLE

I have no doubt that the other Soviets did indeed pressure him in regards to his family, and I believe they were very active in "reminding" him of certain consequences of defection, such as not likely ever seeing his family again. However, his vulnerability to this process by the Soviets was very likely increased by his not having thought through these issues very thoroughly in advance of jumping.

It should be noted that during my involvement Medvid was a very active adversary against the Americans with a presentation that again fits clinically with an impulsively oriented personality style, consistent with that I described earlier in this response.

Another probability I mentioned in my original report was that of his presentation possibly representing the early signs of a manic episode. It should be noted that impulsivity and sensation seeking are also commonly observed in this condition.

The results of a psychiatric examination are usually presented in a format different than I chose to use in my original report. As I stated in my testimony, I elected to alter the format of my report for specific reasons. The original report used more figurative and less technical language. However, to more fully answer the question regarding on what did I base my assessment, I will now present the relevant data obtained from the examination process in one of several standard formats used for a psychiatric report. The subsections include:

I. BEHAVIOR AND APPEARANCE AND ATTITUDE TOWARD THE EXAMINATIONAL PROCEDURES AND EXAMINERS:
II. PERCEPTION
III. COGNITION (THOUGHT PROCESSES):
IV AFFECT:
V. BEHAVIOR
VI. DATA OBTAINED FROM THE PHYSICAL EXAM AND NEUROLOGIC ASSESSMENT (Relevant to Medvid's Neuropsychiatric Status and the Ultimate Question of Competence):

I. BEHAVIOR AND APPEARANCE AND ATTITUDE TOWARD THE EXAMINATIONAL PROCEDURES AND EXAMINERS: Medvid was neatly dressed and groomed. There was nothing unusual about his clothing. Left arm was in a sling, and he, several times over the two day period, complained of some soreness of his left hand and wrist, but when this issue was pursued, he routinely dismissed it as only minor. There was nothing abnormal, unusual, or bizarre about his posture. Expressions covered a normal range, with no mask-like faces noted. Facial expressions did not suggest anxiety, fear, apprehensiveness, sadness, depression, despair, perplexity, bewilderment, confusion, shame, guilt, distractibility inappropriateness or bizarreness. Dominant facial expressions did however, suggest mild euphoria, occasional silliness and jocularity, and at times anger and hostility, associated with significant contraction of his jaw muscles. Attitude towards me, the interviewer, was initially congenial, but this changed after I began inquiring into events that occurred during the period of his alleged amnesia and the issue of "falling versus jumping." He then became more guarded and antagonistic towards me. He approached my second interview on October 29th, 1985 with a more guarded stance, with both apparent and verbalized suspicion of my intentions and motivations. At one point in the second interview he expressed that he felt I was attempting to make him look like a fool. He became progressively more uncooperative and resistant, associated with a strong competitive stance toward the examiner. He insisted on the presence of the Soviet doctor during both interviews, and he several times appeared momentarily uncomfortable when I raised questions related to various inconsistencies that I noted. These inconsistencies dealt with his initial motivation of jumping, versus his allegation of falling, and his alleged amnesia. I also wondered with him about his fluctuations in mood. I pointed

BEST COPY AVAILABLE

out that the Soviet doctor had told me had had been depressed after being returned to his ship, but yet he was now apparently very pleased to be back with the other Soviets. He reiterated his claim of amnesia and became more overtly angry, refusing to answer further. There was, however, no perplexity or bewilderment when confronted with issues of his alleged amnesia, and no demonstrated motivation to regain the "lost memories" (highly unusual for someone suffering from organically-based or psychogenic amnesia). He also made numerous attempts to convince the examiner of his own mental sharpness and physical stature and generally good health.

II. PERCEPTION: Medvid had no relevant or significant impairment of his basic sensory functions, including sight and sound. He denied hallucinations, and there was no evidence of them. Likewise, there was no evidence of the presence of illusions or other perceptual disturbance or distortion. In spite of his hypomanic features, he actively attended to his surroundings and was even somewhat hypervigilant, with this hypervigilance clearly being in reference to the U.S. personnel present. He expressed no difficulty understanding or comprehending what was being said to him, and he demonstrated a similar normal ability for accurate appreciation of written material. Observational data clearly indicated an absence of either auditory, tactile or visual agnosias. He was fully oriented to person, place, time and situation.

III. COGNITION: Medvid's estimated intelligence was average to moderately above average with a corresponding fund of general information. His concentration was consistently good, and he performed serial subtractions and other calculations quickly and accurately. His memory functions were intact, including assessment of immediate and short-term memory function and long-term memory, with the exception of his alleged amnesia for the period of time from hitting the water until waking up back on his ship. (This alleged, circumscribed anterograde amnesia without any associated perplexity, bewilderment, or motivation to regain the memories is inconsistent with any etiology of amnesia other than malingering, i.e., fabrication. The clearly documented, purposeful activity, with none of the eye-witnesses noting any bewilderment, perplexity, or confusion during the period of his alleged amnesia, also speaks strongly to the alleged amnesia being merely fabricated. Examination through several types of standard psychiatric questions, including proverbs and similarities, along with close scrutiny of his language, indicated relatively few abnormalities of both his thought processes and thought content. There was no thought blocking, tangentiality, autistic speech or loosening of associations. There was no consistent circumstantiality, although he did give very specific detail in describing the events just prior to his "falling" from his ship. Responses to proverbs and similarities clearly indicated an ability for categorical abstract thinking, although he did give several refusals to these questions, consistent with his defensiveness, hostility, and competitiveness toward the examiner. One response to a similarity also indicated an impulsive quality to his thinking. A mildly overelaborate quality to his speech was noted, with possible mild to moderate flight of ideas, with one or two noted clang associations. However, these clang associations were nonsensical in nature, and during the entire period of observation, there was no irrational or bizarre thought content demonstrated. There was no evidence of paranoid or nihilistic delusions. He was somewhat suspicious of the Americans present but not to delusional proportions, when cultural issues and the context of the situation are considered. Although he was somewhat grandiose in his attitude towards himself, upon very specific questioning I was able to rule out the presence of grandiose delusions. The rate of his speech was never abnormally decreased, but intermittently became progressively and abnormally rapid, and when noted was associated with some language slippage. This phenomenon was also associated with a congruent, more animated affect.

BEST COPY AVAILABLE

Medvid's thought content consistently focused around his stated desire to return to his ship and to the Soviet Union. He also expressed many thoughts generally derogatory towards the United States or accusing the Americans present of holding him against his will. Several times in describing his reasons for wishing to return to his ship and the Soviet Union, he presented a logical explanation for his desire and in this process, he demonstrated an ability for some integrative thinking. He continually alluded to his desire to see his family again and to the paramount importance of "mama and papa."

He professed no insight into his original motivation for jumping from his ship, to the point of denying the initial motivation to jump his ship. In regards to his insight into his situation on October 28th and October 29th, 1985, he repeatedly stated that essentially his only problem was the Americans not leaving him alone, to return to his ship. His repeated references to "mama and papa" in association with his desire to return to the Soviet Union was assessed as demonstrating good insight into the overall situation. Medvid demonstrated what I interpreted to be a somewhat inappropriate social judgement, in that he appeared overly "chummy" with the other Soviets. This was further assessed to be congruent with his hypomanic features and basic attitudes towards the Soviets and Americans present, and related to some mild disinhibition of thought and behavior. For example, he made several psychologically primitive sexual references.

IV. AFFECT: Medvid's predominant mood was expansive, jocular and euphoric, but with occasional, abrupt changes to agitation, resentment and defensiveness towards the Americans. His affect was generally animated and flamboyant, but was also labile. His affect was congruent with his thought content and was likewise congruent with his level of motor activity.

V. BEHAVIOR: There was no psychomotor retardation noted, with no decrease in spontaneous motor movements. Likewise, there was no fidgeting, pacing or motor restlessness that would have suggested akathisia, a relatively common side effect of neuroleptics. There were no bizarre mannerisms or postures, with an absence of echolalia and echopraxia. Activity level was mildly increased, but he did express, late in the evening of the 28th of October, that he was tired, and he appeared to be getting tired. Observation of his behavior over a long period of time indicated no findings which would be consistent with anxiety such as fidgeting, deep sighing or hyperventilation. Activity level was increased, but his behavior never became disorganized or random. Furthermore, his behavior remained consistent with his stated intent and desires and he on numerous occasions personally insisted on not being alone in the presence of the Americans. There was a clear and consistent impulsive quality to his behavior, as well as his thinking, but this impulsivity never significantly interfered in his focusing of his stated desire of returning to his ship. The impulsivity was illustrated at numerous points in my original report, including several sexually related gestures, and his quick reaction to several of my confrontations, to the extent that he over-rode the top Soviet official present regarding his personal refusal at several points to continue the second interview.

VI. DATA OBTAINED FROM THE PHYSICAL EXAM AND NEUROLOGIC ASSESSMENT (Relevant to Medvid's Neuropsychiatric Status and the Ultimate Question of Competence): Medvid appeared his stated age, having brown hair with a receding hairline, and blue eyes. He was fully alert, with no evidence of sensorial impairment, and there was an absence of abnormal fluctuations in his level of consciousness. Though I did not personally measure his height or weight, my estimate of this would be 5 feet, 9 inches to 5 feet, 10 inches, 165 to 175 pounds with a mesomorphic body habitus. He was in no apparent significant physical distress although as noted previously,

BEST COPY AVAILABLE

he did several times complain of slight tenderness of the left wrist and hand. At approximately 4 p.m. on October 26th, 1985, his pulse was strong with a rate of 96 per minute. On the late evening of October 28th, 1985, his pulse rate was 84 per minute. Pressure at that time was 130/88, with respirations of 18 per minute with no respiratory distress. Thorough examination of the face and cranium, both by Dr. Carruthers and by me, indicated no evidence of recent trauma, with no deep bruises or contusions and no evidence of fractures. However, there was noted an old, well-healed small scar on the mid-forhead. Eye examination indicated pupils that were equal in size, round and reactive to light. There was no miosis or mydriasis. Extraocular movements were intact with no nystagmus detected, in spite of specific observation for this clinical sign. The oral mucosa was well hydrated and not excessively dry. There was no evidence suggestive of autonomic instability.

Neurologic assessment indicated an entirely normal gait and station. There was good motor strength diffusely, with normal muscle tone, with no evidence of cogwheeling or rigidity. As previously noted there was no decrease in spontaneous motor movement. There was no evidence of sedation or other forms of altered state of consciousness. His speech was spontaneous with the other Soviets and State Department-provided interpreter having no apparent difficulty understanding his verbal speech. Deep tendon reflexes were normal and equal bilaterally. He was right handed. Basic sensory functions were tested and were within normal limits. Frontal release signs were specifically tested, but there was an absence of such signs. Two point extinction was also tested, with a normal response. Normal cerebellar function was clearly demonstrated by lengthy observation of his motor behavior. Likewise, there was an absence of apraxias.

It should be noted that in covering certain relevant information in Section VI, I did not repeat all of the physical findings reported in Dr. Carruthers' physical assessment and more thorough physical exam. However, it should be noted that I was present for the entire physical exam conducted by Dr. Carruthers during the late evening of October 28th, 1985, and it should be noted that the laceration on the left wrist was directly observed by Dr. Carruthers and myself, and that the physical examination was conducted with the patient being fully exposed with the exception of underwear. The information that I have included in Section I - VI of this "report," represents information that I specifically considered and noted at the time of my involvement with Medvid. There, however, was additional data available to me of significance, other than covered in Sections I - VI. This information included a past history of a sports-related accident with an unknown period of unconsciousness at the age of approximately 10 or 11, with a history reported by Medvid of occasional intermittent headaches times many years, and a complaint upon specific questioning of nasal congestion, a slight cough, and slight sore throat for 2 to 3 days prior to October 28th, 1985.

Senator Denton: Relative to 3(b) in your report, is a suicidal attempt or gesture a likely occurrence in the situation described? What in Medvid's character makes your hypothesis plausable?

Major Hunt: Yes, a suicidal gesture or attempt is a likely occurrence in the situation described and also fits with my assessment of his basic personality style, as I've discussed earlier. I have worked with many individuals who have, in anticipating returning to face adverse consequences, considered and/or attempted suicidal, self-destructive acts. Medvid clearly anticipated adverse consequences from being originally returned to his ship, as can be verified from review of the testimony of American eyewitnesses who were involved in returning him to his ship on the early morning of October 25th. This type of response to his situation is consistent with an impulsive, action oriented style, as I have mentioned previously and also fits with a tendency towards intense mood swings, as is often seen in the

COPY AVAILABLE

dramatic cluster of personality disorders that I described. Some of my previous responses describe in more detail the immature features of Medvid's personality that contributed to both his initial features of Medvid's personality that contributed to both his initial defection attempt, suicidal gesture upon being returned to his ship and to his change of heart when given a second opportunity to defect. It should also be noted that I obtained information from my direct questioning and examination of Medvid that was also consistent with the type of personality that I have described.

Senator Denton: Do you have any comments about Dr. O'Malley's criticisms of your psychiatric report and your conclusions?

Major Hunt: Dr. O'Malley's criticisms have no foundation. In his testimony, Dr. O'Malley stated that he was "Board-qualified in Neurology and Psychiatry." To some this may sound impressive. However, this statement also indicates to the more informed that Dr. O'Malley is not board certified in Psychiatry or Neurology. In other words, he has not been designated a specialist in the area of psychiatry or neurology by the American Board of Psychiatry or Neurology. The statement furthermore indicates that he has either not taken, or has not passed his board certification exams. He also states in his testimony that for the past 15 years he has held various positions in the U.S. pharmaceutical industry. I have questions about how many patients he has seen in the past 15 years, and about his activity in the field of clinical psychiatry in the past 15 years.

It seems from reading Dr. O'Malley's testimony that he based his criticisms on a review of two reports, "the report of the U.S. Air Force psychiatrist" and that of a Navy physician who "also carried out a routine, very limited physical examination." Adding to this impression is the fact that my original report, along with a transcript of Dr. Carruthers' handwritten note (from October 26th, 1985, recording the findings of his brief physical assessment) were printed along with Dr. O'Malley's testimony in the Congressional Record. However, it should be noted that the State Department released three medical reports, including my original report, the transcript from Dr. Carruthers' brief physical assessment and a copy of a more extensive physical examination that Dr. Carruthers performed in my presence in the late evening of October 28th, 1985. Furthermore, close review of Dr. O'Malley's testimony indicates that he had access to all three reports also. This is a reasonable deduction after noting that in Dr. O'Malley's testimony there are at least three references to information that was only contained in the third medical report. However, the third report was not included in the Congressional Record or directly referred to by Dr. O'Malley. In spite of his three references to material, in the third report, he at other points criticizes our reports' methods and conclusions, based on information he claimed we "omitted," but which did, in fact, appear in the third report. Although I personally did not perform a complete physical examination I did consult with Dr. Carruthers prior to the physical examination that he performed on Medvid Monday evening the 28th of October 1985. The purpose of this consultation was to specifically clarify various physical findings to look for on the upcoming physical examination that would have related to possible drug effects. Additionally, in conjunction with Dr. Carruthers' physical examination, I did perform several additional clinical neurological tests, to look for specific clinical signs that would have related to possible drug or other organic effects. Dr. O'Malley made statements, used as support for his criticisms, that had no basis in reality. For example, Dr. O'Malley stated in his testimony that Medvid strongly resisted the ship's security personnel "who beat him up." However, review of the statements by American eyewitnesses indicate that although physically restrained, Medvid was not beaten up. At another point, Dr. O'Malley stated, "I find it very curious that none of the doctors examining Mr. Medvid attempted to remove his bandage." In the next paragraph, he states,

BEST COPY AVAILABLE

"However, the Air Force psychiatrist does note that a cut on the left wrist that was large enough and deep enough to require three sutures." I find it curious how Dr. O'Malley presumes that I noted the three sutures without removing the bandage? Although Dr. Carruthers and I both directly observed the wrist laceration, Dr. O'Malley incorrectly attributed the notation regarding the"cut on the left wrist" to my report, when it was actually noted in one of the Navy doctor's reports.

In supporting his criticism of my conclusion that Medvid's initial defection attempt was "based primarily on a rather impulsive decision," Dr. O'Malley points out Medvid's goal-directed, purposeful behavior that was involved in his initial defection. However, he fails to consider the fact that goal-directed behavior is impulsive when the goal is sought after without adequate consideration for other facets of reality such as likely consequences. Goal-directed action can still represent impulsive behavior if based on the "pleasure principle" at the expense of the "reality principle". A pattern of actions and motivations based on the "pleasure principle" at the expense of the "reality principle" is an indication of some impairment in ego functioning, i.e., immaturity. This however would not render someone incompetent. In the situation with Medvid I had adequate information available to me to make the assessment of a young man with a rather immature personality (fairly common in young males of Medvid's age), who had not adequately, prior to jumping, considered such issues as permanent separation from his family and their fate. I had further support for my conclusion based on a history of several potential organic factors from childhood that could have contributed to this impulsive tendency. These factors, attention deficit disorder with hyperactivity and an organic affective or personality syndrome (secondary to a concussion sustained in youth) were mentioned in my original report. I also had information from direct observational data, including his responses to mental status questions, observed behavior, and his general attitude, to recognize that he had a generally sensation-seeking, action-oriented personality style, consistent with a predisposition to impulsive, not thoroughly thought out behavior. My conclusions of the impulsive aspects of his initial attempt at defection also fit well with the facts regarding how this whole situation unfolded with its many facets and complexities. It is maybe unfortunate that the Soviets had an opportunity to point out some of the "realities" of Medvid's and his family's situation, but the facts are that they did have this opportunity "to reinforce the reality principle over the more impulsive pleasure principle."

In making the assessment of his impulsivity, I concluded that Medvid did not initially attempt to defect for primarily deep political or moral reasons, rather out of an impulsive, sensation-seeking, "pleasure principle" motivation. My conclusions do not preclude the fact that Medvid stated to the initial interpretor that he wanted to defect for political and moral reasons, and that he wanted an honest country. It is common understanding among experienced psychiatrists that individuals with immature personalities often become discontent with their situations, tend to blame others for it, and act out their discontent in association with themselves, others, and their environment in problematic ways without adequate consideration for the consequences. Although Medvid could have potentially jumped for deep seated political and moral reasons, the weight of the evidence strongly supports otherwise. Also Medvid's moderately above average intelligence was noted, which would have made it more likely for Medvid to have made these statements, yet his basic desire to defect being for other reasons. He certainly knew "the right things to say" when playing out the Soviet game plan on October 28th and 29th, 1985. Furthermore, if his initial motivation for jumping had been for well thought out, deep seated political or moral concerns, he would have been less vulnerable to Soviet reminders about family. A mature person would have considered such factors and weighed them out prior to jumping.

To support his criticism of my conclusions that Medvid was not adversely under the influence of any drugs, Dr. O'Malley makes reference to the "casual observer." I would like to point out that in this situation I was not the average casual observer. I am very aware of the properties and actions, both subtle and more dramatic, of the neuroleptics. My knowledge of this type of drug leads me to disagree with Dr. O'Malley's statements that "for reasons we do not fully understand, the drugs act selectively in those areas of the brain which control the affective functions." Neuroleptics have actions on areas of the brain involved in thought, behavior, and emotion, but have other less selective effects in addition, which are of clinical signficance.

Neuroleptic drugs can fairly often produce dyskinesias and other movement disorders, including some of which are very similar and intimately related with Parkinson's Disease, of which Dr. O'Malley referred in an earlier part of his testimony. Medvid had no signs of any of these common movement disorders encountered with the use of neuroleptics. The neuroleptics that have the least potential for this type of side effect are, alternatively, the most sedating. To achieve a therapeutic effect in regards to controlling agitated behavior or such symptoms as hallucinations, dosages are often high enough to produce significant, clinically observable sedation and/or other side effects, including postural hypotension, tachycardia, dry oral mucosa, dilated pupils, abnormalities of extraocular movements, stiff posture, somewhat slowed mechanical-like motor movements, tremor, mask-like faces and blurry vision, making reading difficult. Medvid demonstrated none of these features. Dr. O'Malley further incorrectly assumed that the Soviet doctor stayed the night of October 28th and 29th with Medvid. The Soviet doctor was present for the interviews and examinations, but did not spend the night with Medvid and Medvid's time alone with any of the other Soviets, without the presence of Americans, was negligible and inadequate for Medvid to have been given medication. Dr. O'Malley further criticized my second conclusion by selectively considering or omitting, information that was available to him in the third report. Dr. O'Malley also criticized my second conclusion on the basis of not having done an EEG or obtained blood or urine samples. These tests would have, indeed, yielded information, but not information that was really necessary for the questions at hand. Any impressions Dr. O'Malley gave about Medvid having been "tamed into submission" by nueorleptics simply do not fit with the facts. My report clearly illustrated how Medvid was certainly not tamed or subdued. Dr. O'Malley furthermore evades such issues as the current lack of predictable correlation of blood level with clinical activity, effects and response. Dr. Leo E. Hollister, Professor of Medicine and Psychiatry at Stanford University School of Medicine and a senior medical investigator at the Veterans Administration Medical Center in Palo Alto, California, a world renowned expert in both basic and clinical psychopharmacology, reviewed these issues in an article he wrote in 1984 that appeared in The Psychiatric Clinics of North America. In that article he states, "For the moment, measurement of plasma concentrations of antipsychotics is an experimental exercise and not of any proven clinical utility." I already assumed that Medvid had been given nuroleptics and I had looked for effects of nueroleptics and had ruled out any condition that could have been secondary to them and I had ruled out any condition that could have impaired Medvid's competence. Therefore, getting urine or blood tests to merely confirm that Medvid had been given neuroleptics several days earlier would have added essentially nothing and would not have resulted in a change from my basic conclusions. I didn't need to get a cardiogram to know that Medvid's heart was beating and that he was not in cardiovascular distress. Similar to my decision to not obtain an EEG or blood or urine samples, I chose not to drain Medvid's entire blood supply to basically know his blood volume. With no significant index of suspicion for

organic impairment, based on the findings of extensive examination, for me to have insisted on an EEG or the delays involved in obtaining very specialized blood and urine determinations would have been almost as absurd.

Dr. O'Malley's criticism of my third conclusion is simply without foundation. He misrepresented the true nature of the physical findings in regards to the superficial laceration of the left wrist, several superficial clean lacerations on the exposed fingers of the left hand, and several ecchymotic areas on the right arm. The superficial lacerations on the fingers of the left hand were not, according to Dr. Carruthers, at all suggestive of the type of lacerations that would have been inflicted through torture. Rather, these were extremely superficial lacerations that would not have affected pain fibers. The noted ecchymotic areas were not at all suggestive of beating. To further illustrate, let me note that the types of bruises we noted would never be the type of evidence to substantiate child abuse, for example. Dr. O'Malley incorrectly assumed, or believed, that Medvid had been physically tortured or beaten but the true physical findings did not support such beliefs or assumptions. As a result, Dr. O'Malley's conclusion regarding the inaccuracy of my assessment of Medvid's competency, is without any real basis.

In the conclusion of Dr. O'Malley's testimony, he attributed several conclusions to me that are simply not accurate deductions from the true content of my original report. In regards to the issue of sanity, Medvid was legally sane both when he initially attempted to defect and when he made the decision to return to his ship and the Soviet Union. In regard to the concept of personal responsibility, again, it can be stated that a court of law would likely have held Medvid legally responsible for both actions, initial defection attempt and his later decision to return to his ship. Rather than Dr. O'Malley's conclusion, it is more accurate to conclude that Medvid succumbed to the pressure of the "reality principle" in that the reality of the situation was that the Soviet Union would continue to have influence over his family if he chose to defect. Ultimately, that was the price Medvid was not willing to pay, particularly when the other Soviets gave him a way out by "playing the game right." Although I assessed Medvid to be rather immature, I felt that on psychiatric grounds, his decision was to be respected as that of a man of essentially sound enough mind to make that type of decision for himself.

I would further like to qualify that my conclusions in no way give approval to certain "realities" of the Soviet system, but my lack of approval doesn't change these realities. Medvid was also apparently aware of these realities, such as the likely consequences to his family if he had, when given the second opportunity, chosen to defect.

BEST COPY AVAILABLE